

**Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

REFERENCE:  
OL KOR 1/2018

5 April 2018

Excellency,

I have the honour to address you in my capacity as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolution 32/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning attempts by some conservative and religious groups in the Republic of Korea to challenge and weaken the protection from discrimination based on sexual orientation and gender identity that exist in the country.

In this respect, I am concerned about the decision of the Council of South Chungcheong province on 3 April to repeal the 2014 Human Rights Ordinance which can be construed as including sexual orientation and gender identity as protected grounds of discrimination through a reference to the National Human Rights Commission Act.

Background information

The National Human Rights Commission Act (Law No.6481) adopted in 2001 includes sexual orientation and gender identity as prohibited categories. It grants the National Human Rights Commission of Korea power to issue human rights policy recommendations, investigate and issue non-binding judgements in cases of discrimination, conduct awareness-raising and educational campaigns, and cooperate with human rights groups and activists.

In 2012, the National Human Rights Commission of Korea advised each local government (17 metropolitan and 226 primary local governing bodies) to enact human rights ordinances based on the principle of local autonomy. Ordinances then provide ground for the establishment of local human rights institutions to promote and protect human rights in their jurisdiction. This initiative led to the adoption of human rights ordinances by 16 metropolitan governments, including South Chungcheong province.

South Chungcheong Human Rights Ordinance

Passed in 2014, the South Chungcheong ordinance can be construed as including sexual orientation and gender identity as protected grounds of discrimination through a reference to the National Human Rights Commission Act.

In reaction, some religious groups started advocating for the abolition of local human rights ordinances, arguing that they protect the rights of lesbian, gay, bisexual and transgender (LGBT) people. In this context, a number of religious groups in South Chungcheong Province launched a campaign in April 2017 to demand the repeal of the provincial Human Rights Ordinance, including through massive demonstrations, a sit-in at the provincial government building, and a petition with 17,000 signatures.

As a result, one of the Council members of the South Chungcheong province proposed a bill to repeal the Human Rights Ordinance, which was passed by the Council on 2 February 2018.

The Governor of the province appealed against the decision and asked for re-examination.

On 3 April 2018, the Council of South Chungcheong province reexamined the matter and decided to repeal the Human Rights Ordinance. More than two third of participating members (i.e. 26 out of 34) supported the decision.

#### Possible spillover effects

Religious groups are currently calling for the repeal of human rights ordinances in other cities, including Gongju, Gyeryong and Buyeo in the South Chungcheong province and Jeungpyeong country of North Chungcheong province.

According to information at our disposal, these attempts exacerbate hatred against LGBT people, and threaten the human rights architecture put in place in the country to protect LGBT people against violence and discrimination.

#### Attacks against the national human rights architecture

Similarly, there are attempts to challenge the broader national human rights protection system. Some religious groups argue for instance that the National Human Rights Commission Act, which explicitly prescribe prohibition of discrimination based on sexual orientation and gender identity, encourages homosexuality and the spread of AIDS. Consequently, they opine that the National Human Rights Commission of Korea, which was established pursuant to the Act, should be dissolved. In addition, some groups claim, inter alia, that homosexuality is a mental illness and spread false information about sexual orientation and gender identity, inciting hatred against LGBT people.

Attacks against human rights ordinances and human rights institutions are the latest in a series of actions aimed at weakening the human rights protection system in the Republic of Korea. For instance, in 2017 an amendment was proposed to delete reference to ‘sexual orientation’ as a ground for discrimination in the National Human Rights Commission Act. The draft amendment is currently

pending before the National Assembly. In addition, in 2018, members of the National Assembly who proposed a bill to regulate hate speech and legislative amendments to empower the National Human Rights Commission of Korea to investigate hate speech cases had to withdraw these bills due to strong opposition from conservative and religious groups.

I believe that the adoption of the National Human Rights Commission Act, which is the first of its kind in the Republic of Korea to explicitly prohibit discrimination based on sexual orientation and gender identity, constitutes a significant advance towards the protection of LGBT people from discrimination and the eradication of violence based on sexual orientation and gender identity. I also welcome the adoption of human rights ordinances and the establishment of human rights institutions at local level, which strengthen the legal protection from discrimination on the basis on sexual orientation and gender identity and the human rights architecture for the effective implementation of equality and non-discrimination.

I am very concerned by the recent decision of the Council of South Chungcheong province to repeal the Human Rights Ordinance.

Dismantling the current legal and institutional human rights framework due to the pressure of anti-rights groups would be of grave concern.

In this regard, I call on the Government of your Excellency to adopt all necessary measures to ensure that the human rights of LGBT people are fully respected and to continue promoting legislation and public policies in line with international human rights standards.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

I would be very grateful for your cooperation by providing any additional information and any comment you may have on the above-mentioned information. In this connection, kindly provide information 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. Please also explain how these decisions could impact on the Republic of Korea's compliance with its international human rights obligations, including non-discrimination on the grounds of sexual orientation and gender identity provided for, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by the Republic of Korea on 10 April 1990.

Finally, I would appreciate it if your Government could provide information on any other legislative measures or public policies adopted or envisaged to protect LGTB persons against hate speech, violence and discrimination and on measures taken to

implement the recommendations made by international human rights mechanisms in this regard (see Annex).

I would be grateful to Your Excellency's Government if the present letter could be shared with the members of Councils of South and North Chungcheong provinces.

I would appreciate receiving a response from the Government of your Excellency as soon as possible, but at the latest within sixty days.

The response of Your Excellency's Government will be made available in a report to the Human Rights Council for its consideration.

I may publicly express my concerns in the future as, in my view, the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that it may be necessary to alert the wider public to the potential implications of the above-mentioned allegations. In the same spirit, I intend to publish the present letter on the webpage of my mandate. The press release, if any, would indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Victor Madrigal-Borloz  
Independent Expert on protection against violence and discrimination based on sexual  
orientation and gender identity

## Annex

### Reference to international human rights law

In connection to the above concerns, I wish to refer your Excellency's Government to the jurisprudence, general comments and concluding observations of United Nations treaty bodies that consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law. In addition, the special procedures of the Human Rights Council have long recognized discrimination on these grounds.

The right to non-discrimination is protected by article 2 of the Universal Declaration of Human Rights as well as the non-discrimination provisions of core international human rights treaties.

The Human Rights Committee found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity<sup>1</sup>, and it has often welcomed the enactment of legislation that includes sexual orientation and gender identity among the prohibited grounds of discrimination<sup>2</sup>. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected.<sup>3</sup> In 2015, the Committee recommended the adoption of comprehensive anti-discrimination legislation explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including sexual orientation and gender identity. In addition, the Committee expressed concerns about the widespread discrimination against LGBTI persons, including violence and hate speech and recommended that the Republic of Korea clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against persons based on their sexual orientation or gender identity.<sup>4</sup>

The Committee on Economic, Social and Cultural Rights has also affirmed that the non-discrimination guarantee of the International Covenant on Economic, Social and Cultural Rights includes sexual orientation, gender identity and sex characteristics. In its concluding observations the Committee has urged the adoption of legislation to protect LGBT and intersex persons from discrimination<sup>5</sup> and has praised States for the adoption of such legislation<sup>6</sup>. In 2016, the Committee explained that non-discrimination: "[...] encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and

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<sup>1</sup> See, for example: CCPR/C/89/D/1361/2005: *X v. Colombia*. (2007); CCPR/C/78/D/941/2000: *Young v. Australia* (2003); CCPR/C/50/D/488/1992: *Toonen v. Australia* (1994); E/C.12/GC/20. (2009). Paragraph 32 & footnote 25;

<sup>2</sup> See for instance CCPR/C/SWE/CO/7, CCPR/CO/83/GRC, CCPR/CO/82/FIN, CCPR/CO/78/SVK, CEDAW/C/MNE/CO/1.

<sup>3</sup> UDHR, Art. 7; ICCPR, Art. 26;

<sup>4</sup> CCPR/C/KOR/CO/4, para. 12-15.

<sup>5</sup> See, for example, E/C.12/HND/CO/2, E/C.12/SDN/CO/2, E/C.12/ITA/CO/5, E/C.12/IRQ/CO/4, E/C.12/UGA/CO/1, E/C.12/1/Add.107, E/C.12/1/Add.80.

<sup>6</sup> E/C.12/ALB/CO/2-3, E/C.12/1/Add.35, E/C.12/1/Add.70, E/C.12/LIE/CO/1, E/C.12/MCO/CO/1, E/C.12/CO/BRA/2.

intersex status. [...] State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health<sup>7</sup>.” In 2017, the Committee recommended that the Republic of Korea take effective measures to eliminate de jure and de facto discrimination against LGBTI persons, including by ensuring that the comprehensive anti-discriminatory law to be adopted also prohibits discrimination on the grounds of sexual orientation and gender identity.<sup>8</sup> The Committee on the Elimination of Discrimination against Women made a similar recommendation in 2018.<sup>9</sup> The Committee on Economic, Social and Cultural Rights also recommended to the Republic of Korea to conduct awareness-raising campaigns to counter prejudices regarding LGBTI persons.<sup>10</sup>

The Committee on the Rights of the Child likewise interprets the right to non-discrimination in article 2 of the Convention on the Rights of the Child to include sexual orientation<sup>11</sup> and gender identity.<sup>12</sup> In its concluding observations, the Committee has raised concerns about legislation that does not protect individuals from discrimination on the grounds of sexual orientation or gender identity and about inadequate efforts to combat such discrimination.<sup>13</sup>

I would also like to recall resolution 32/2 of the Human Rights Council, where the Council reaffirmed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights and strongly deplored acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. In this connection, the United Nations High Commissioner for Human Rights has issued recommendations that, inter alia, States enact hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing; and ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds.<sup>14</sup>

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<sup>7</sup> E/C.12/GC/22: CESCR General Comment No. 22, para.23

<sup>8</sup> E/C.12/KOR/CO/4, para. 25.

<sup>9</sup> CEDAW/C/KOR/CO/7, para. 13.

<sup>10</sup> E/C.12/KOR/CO/4, para. 25.

<sup>11</sup> Committee on the Rights of the Child, General Comments No. 4 (Adolescent health and development in the context of the Convention on the Rights of the Child), para. 6; and No. 3 (HIV/AIDS and the rights of the child), para. 8.

<sup>12</sup> Committee on the Rights of the Child, General Comment No. 13 (The right of the child to freedom from all forms of violence), at paras. 60 and 72(g) (stressing that States parties must address discrimination against vulnerable or marginalized groups of children including children who are lesbian, gay, transgender or transsexual); and General Comment No. 15 (The right of the child to the enjoyment of the highest attainable standard of health), at para. 8..

<sup>13</sup> CRC/C/POL/CO/3-4, CRC/C/GUY/CO/2-4, CRC/C/AUS/CO/4, CRC/C/NZL/CO/3-4, CRC/C/SVK/CO/2, CRC/C/MYS/CO/1, CRC/C/CHN/CO/2, CRC/C/15/Add.134.

<sup>14</sup> A/HRC/29/23, para. 78(a) and 79(c).