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KGV/220/2020

The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and, with reference to the former's note No. KGV/210/2020 dated 22 October 2020, has the honor to transmit herewith the updated version of the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures (AL KOR 5/2020).

The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.

Geneva, 29 October 2020

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais des Nations, CH-1211 Geneva 10, Switzerland



The ROK Government's Response to the Joint Letter by the Special Procedures of Human Rights Council

1. Additional information and/or comment on the above-mentioned allegations

- o The government of the Republic of Korea respects activities of non-profit organizations and protects them by law. The government also recognizes the importance of human rights issues in North Korea and acknowledges the positive aspects of the activities of these organizations.
- At the same time, the government has a responsibility to ensure that all activities by non-profit organizations, especially those activities related to human rights and the public interest, should be conducted based on constitutionalism, support and understanding from the public, and balancing of social values.
- **(Constitutionalism)** As there are laws and regulations related to non-profit organizations, including the Constitution of the ROK, the Civil Act, the Assistance for Non-profit, Non-governmental Organizations Act, and the Regulations on the Management of Non-profit Organizations Registered Under the Ministry of Unification, activities of these organizations and the government's management should be conducted based on them. It is inappropriate to disregard existing laws and regulations and make purely political decisions.
- **(Support and Understanding from the Public)** Even when non-profit and non-government organizations conduct their activities, they need support and understanding from the public for sustainability and legitimacy. Transparent and open work process as well as adherence to laws are required for such organizations to be sustainable and legitimate, and the government needs to confirm whether these organizations adhere to existing laws while respecting their autonomy.
- **(Balancing of Social Values)** Even when an activity contributes to promotion of the public interest, it may conflict with other values in our society. Especially when it comes to inter-Korean relations, unique characteristics of the relations, realistic risks of military confrontation and other issues should be

considered, and the government is responsible for balancing these considerations.

- Recent revocation of licenses of two organizations took place as their activities resulted in violations of basic rights of others and the public order. In addition, diverse values to be considered in light of the reality of the inter-Korean relations were not sufficiently taken into account.
- The audit for non-profit organizations is aimed at improving and adjusting their activities to ensure that they comply with laws and gain support and understanding from the public.
- o The audit and licence review in progress by the Ministry of Unification (MOU) are legal and routine measures based on the above mentioned principles and the standards and procedures set by the Korean law.
- o The audit is not intended to discriminate against the organizations working on human rights in North Korea or those led by North Korean defectors.
- Among the total of 433 non-profit organizations registered under the MOU, 109 organizations working on various fields including human rights in North Korea, settlement support, unification policy, exchange and cooperation, and humanitarian assistance were selected for the audit.
- The 109 organizations were selected either for their failure to submit their annual operation reports which is required by law, or for the lack of necessary information in their reports which warrant additional review by the MOU. The same standards were applied across all the fields during the selection process.
- Among the 109 organizations, only seven(6%) organizations work on human rights in North Korea. Thirteen(12%) organizations working on human rights in North Korea and settlement support are led by North Korean defectors.
- o The MOU has ensured opportunities for dialogue and participation for the organizations to the maximum extent possible throughout the audit.
- The audit date and modality(on-site audit or document review) were determined through consultations with the organizations. Taking into

account the spread of COVID-19 and each organization's situation, the MOU has been flexible about scheduling.

- Considering the spread of COVID-19, some organizations that were planned to be audited between 24 August and 4 September rescheduled their audits. Two organizations that agreed on an audit on 10 September through a consultation changed their stance later, rejecting the audit altogether. After listening to those organizations, the MOU did not conduct audit, and it will consult with them again on the date and the modality.
- o The purpose of the audit and license review is not to identify violations and punish the organizations, but to improve their work process as part of their capacity building.
- Regarding the inquiry made through the joint communication, as of 30 September, the MOU has completed audit for 16 out of 25 organizations on human rights in North Korea and settlement support. Among the remaining 9 organizations, two organizations are out of reach and the MOU is assuming that they are no longer in operation. With the other seven organizations, the MOU is currently working on audit schedules.
- None of the 16 audited organizations' licenses were revoked after the audit. the MOU is working with those 16 organizations to address the issues that were identified through the audit.
- The audit is conducted by two MOU officials. They visit the organization's office to review its work plans, transcript of board meetings, and basic documents including financial documents. MOU officials also hear from them on their program implementation and their concerns.
- In response to requests from the organizations made during the audit process, MOU officials have been advising them on how they should draft reports required to maintain their current status under the law, and on basic financial management process. Also, officials have been giving advice on how the organizations can apply for government subsidies and have been sharing good practices to help them improve their work.
- o As some organizations have requested the MOU to provide capacity building programs on management and opportunities to interact with the government and other organizations, the MOU will hold workshops to brief

them on management, laws and regulations, and government support programs. The workshops will also provide a platform for the organizations to share their experience among their peers. The MOU will start with the organizations working on human rights in North Korea and settlement support this year. With these efforts, the MOU will continue to create an environment in which the activities of these organizations can be protected and promoted.

- o The license review process is also aimed to monitor these organizations' basic status, find room for improvement, and provide an opportunity for capacity building along with other support to strengthen and protect their activities.
- The MOU is reviewing documents submitted by the organizations. The MOU is also continuously requesting organizations to submit their documents if they have not yet done so.

<h2>2. Legal basis for revoking licenses of two organizations that have sent leaflets to North Korea</h2>

- o For the past ten years, **the ROK government, courts, and residents in the border areas have repeatedly requested organizations to stop sending leaflets to North Korea as it violates inter-Korean agreements and domestic laws, escalates tensions on the Korean Peninsula, and poses a threat to life and property of the people living in the border areas.**
- **(Government)** Since 2008, the ROK government repeatedly sent official letters (5 times), had meetings with the organizations (29 times), had phone calls (16 times) and attempted to regulate such actions with laws (16 bills were introduced).
- **(Supreme Court)** In February 2016, the Supreme Court of the Republic of Korea ruled that freedom of expression can be limited for flying leaflets which threatens lives and safety of the people.
- **(People living in the border areas)** Border residents have repeatedly requested the organizations to refrain from sending leaflets to North Korea through official statements, resolutions, official requests to the government, letters to the United Nations and other means (17 times).

- * A survey conducted between 19 and 20 June 2020 found out that 71% of the people who answered the survey (among those who live in the border areas in Gyeonggi province) replied that leaflets should be stopped and 59% of them replied that leaflets are threatening their life and safety.
- * A survey conducted by the National Unification Advisory Council on people's perception related to reunification indicated that 61.5% of people who answered the survey agree with the introduction of a ban on sending leaflets to North Korea by law.
- o Despite these repeated requests, Fighters for Free North Korea and Keun Saem continued sending leaflets. Thus, the government has revoked licenses of these organizations following an investigation on their violations of Inter-Korean Exchange and Cooperation Act, Public Waters Management and Reclamation Act, Aviation Safety Act and other laws.
- o Sending leaflets to North Korea constitutes reasons for revoking licenses under the law, as such activities amount to a deviation from their purpose of establishment, violation of the license conditions, and violation of the public interest. Revocation of their licenses is in line with the principles of necessity and proportionality.
- ① According to their respective charters, Fighters for Free North Korea was established for research and promotion of human rights in North Korea, and Keun Saeum was established for education of teenage North Korean defectors. Sending leaflets and materials amounts to a deviation from their purpose of establishment.
- ② Both organizations continued sending leaflets to North Korea in violation of inter-Korean agreements reached between two Koreas several times since the 1970s, on abstention from mutual slander. Their activities have also contradicted their license conditions, escalating inter-Korean tensions and undermining efforts to promote Inter-Korean dialogue and humanitarian cooperation.
- ③ Sending leaflets to North Korea has also continuously posed a threat to life, safety and property of ROK citizens living in the border areas, significantly eroding the public interest.
- . (Threat to Life) North Korea threatened to strike and destroy the spots from where leaflets were sent, aimed and fired anti-air gun at leaflets in

October 2014; announced retaliation, anti-ROK projects and military action plans; and demolished the Inter-Korean Joint Liaison Office on June 16, 2020.

(Statements from the North Korean Authorities)

- “Not only we will shoot balloons, but we will strike those who have organized such activities(Nov 2014)”
- “We will continue to fight till the end in this vicious cycle of confrontation(June 2020)”
- “Fight against the South by sending 12 million leaflets(June 2020)”

- . **(Threat to Property)** Limited access to the border areas has caused challenges to farming and fisheries and has contributed to the decrease in the number of tourists, resulting in income loss for the residents. It has also contributed to a decrease in the real estate value. Fallen leaflets and materials have damaged farms and houses and incurred cleaning costs for the residents.

※ As the leaflets and materials are carried on the wind or waves, a large share of them fail to reach North Korea, resulting in environmental pollution and cleaning costs for the border residents.

- . **(Threat to Peace and Education)** Escalated tensions on the Korean Peninsula have been disrupting daily lives of the border residents. Students’ right to education has been infringed upon due to occasional closing of schools and evacuation to shelters.

- . **(Threat to Health)** Following the spread of COVID-19, there are concerns that the leaflets and materials may carry the COVID-19 virus, which have aggravated fears among the border residents and have also raised an issue of a possible violation of the right to health of the North Korean residents.

* Some defector organizations have made a claim on the Internet that they will contaminate the leaflets with the COVID-19 virus and send them to North Korea.

《 Reference - Civil Act 》

Article 38(Cancellation of Permission for Incorporation of Juristic Person) In a case where a juristic person operates such business outside the scope of its purpose, violates such conditions attached to the permission for its incorporation, or does acts harming public interest, the competent authorities may cancel the permission.

3. Rationale behind the audit of 25 organizations and the selection process

- o June this year, the National Assembly and the Korean media made numerous requests to the government that it should strengthen monitoring of non-governmental organizations, leading to a decision to conduct a comprehensive review of the operations of non-governmental organizations.
- o **The Civil Act, the Regulation on the Management of Non-profit Organizations Registered under the Ministry of Unification, and other laws allow competent government entities to conduct audit and inspection for the organizations under the entities.**
 - In 2020, 109 organizations working on human rights in North Korea, settlement support, unification policy, exchange cooperation, humanitarian assistance and other fields were selected.
 - The 109 organizations were selected either for their failure to submit their annual operation reports which is required by law, or for the lack of necessary information in their reports which warrant additional review by the MOU. The same standards were applied across all the fields during the selection process.

« Reference »

☐ Civil Act

Article 37(Inspection and Supervision over Business of Juristic Person) The business of a juristic person shall be inspected and supervised by the competent authorities.

☐ Rules of incorporation and supervision of non-profit organizations under the Ministry of Unification

Article 8(Supervision and inspection of organization) ① If deemed required for inspection and supervision of organization, according to Article 37 of Civil Act, Minister of Unification can require organizations to submit related documents, record of financial status and other references, or have a government official to conduct an audit on organization's work and financial status.

② A government official conducting audit based on Article 8.1 should display document to prove his or her qualification of audit to related persons of an organization.

☐ Regulations on the management of non-profit organizations registered under the Ministry of Unification.

Article 6(Inspection of Juristic Person) ① Based on article 8 of ordinance of the Ministry of Unification, if an inspection is required, authority managing the tasks should

request audit to supervising authority, where the necessity for the audit will be reviewed followed by planning.

② The supervising authority is led by Director for Organization and Management Innovation with officials from inspection, supervision and management to create inspection team.

③ Based on Article 6.1, the supervising authority should notify organization subject to inspection with date, subject of inspection, rationale and other necessary information in a document at least 10 days prior to the inspection.

④ The supervising authority should report to the Minister of Unification within 10 days after the inspection, and when it is recognized that the organization's work is inappropriate to the purpose of the organization, following related information should be notified to authorities managing the organization.

1. Required warning

2. Required improvement or adjustment

3. Stop business

4. Cancellation of permit

⑤ The supervising authority should notify outcome of inspection within a month after the inspection to the organization with document stating outcome of inspection including content stated in Article 6.4.1 through Article 6.4.3.

⑥ The supervising authority can force organizations to stop business or cancel permit when organizations who were notified based on Article 6.5 do not comply with request by supervising authority within two months after notification.

4. Legal basis and rationale for requesting documents from 64 organizations

o As of 2020, 180 non-profit organizations are registered under the Ministry of Unification and all organizations are undergoing review of their licenses.

- These non-profit organizations work in various fields including human rights in North Korea, settlement support, unification policy, exchange cooperation, and humanitarian assistance, among which 64 organizations work on human rights in North Korea and settlement support.

o **License review for non-profit organizations is a legal procedure based on 'Assistance for Non-Profit, Non-Governmental Organization Act.'**

- Based on Assistance for Non-Profit, Non-Governmental Organization Act, if non-profit organizations wish to be registered under a government entity as a non-profit non-government organization, they need to have at least 100 members, have participated in activities for the public interest during the past year, maintain at least two offices in different cities or provinces, and also meet some other standards. They are required to meet such standards even after their registration.

- o As these organizations are subject to government subsidies, tax benefits and other assistance once registered, satisfying qualifications to be registered under the Korean law and maintaining such qualifications is required in light of the public interest.
- The government has a responsibility to review whether these organizations satisfy such requirements.
- o Currently, the MOU is conducting a review for 33 organizations which have submitted documents. The MOU is also working with the 31 organizations that have yet to submit their documents, extending the submission deadline for them.
- No organizations working on human rights in North Korea and settlement support have had their licenses revoked as of October.

《 Reference - Assistance for Non-Profit, Non-Governmental Organization Act 》

Article 4 (Registration) ① Any non-profit, non-governmental organization that intends to receive support determined by this Act shall apply for its registration with the head of a central administrative agency, or the Special Metropolitan City Mayor, a Metropolitan City Mayor, a Special Self-Governing City Mayor, a Province Governor, or a Special Self-Governing Province Governor (hereinafter referred to as "Mayor/Governor"), who supervises its main public interest activities, and the head of a central administrative agency or the Mayor/Governor upon receipt of such application for registration shall accept such registration.

② Where any non-profit, non-governmental organization has been registered under paragraph (1), the head of a central administrative agency or Mayor/Governor shall not only post such fact in the Official Gazette or public bulletin but also notify the Minister of the Interior and Safety of such fact. The same shall apply where the registration is changed.

Article 4-2 (Cancellation of Registration) ① The head of a central administrative agency or Mayor/Governor may cancel the registration of any non-profit, non-governmental organization registered under Article 4, when it fails to satisfy the requirements for non-profit, non-governmental organizations prescribed under Article 2.

② The head of a central administrative agency or Mayor/Governor who has canceled the registration shall immediately publish such cancellation in the Official Gazette or public bulletin and notify the Minister of the Interior and Safety of such fact.

③ When the head of a central administrative agency or Mayor/Governor intends to cancel the registration under Article 1, he/she shall hold a hearing prescribed in the Administrative Procedures Act.

5. Process for organizations not complying with the audit process

- o The MOU respects the views of the organizations and provides sufficient opportunities for them to present their views throughout the entire audit process.
 - Advance explanation of the purpose and process of the audit were provided to all organizations through phone calls or visits by officials to the organizations before the audit.
 - The audit date and modality(on-site audit or document review) were determined through consultations with the organizations. Taking into account the spread of COVID-19 and each organization's situation, the MOU has been flexible about scheduling.
 - The audit is conducted by two MOU officials. They visit the organization's office to review its work plans, transcript of board meetings, and basic documents including financial documents. the MOU officials also hear from them on their program implementation and their concerns.
 - In response to requests from the organizations made during the audit process, the MOU officials have been advising them on how they should draft reports required to maintain their current status under the law, and on basic financial management process. Also, officials have been giving advice on how the organizations can apply for government subsidies and have been sharing good practices to help them improve their work.
- o As some organizations have requested the MOU to provide capacity building programs on management and opportunities to interact with the government and other organizations, the MOU will hold workshops to brief them on management, laws and regulations, and government support programs. The workshops will also provide a platform for the organizations to share their experience among their peers. The MOU will start with the organizations working on human rights in North Korea and settlement support this year. With these efforts, the MOU will continue to create an environment in which the activities of these organizations can be protected and promoted.

- o Regarding some organizations that have been rejecting the audit, the MOU is constantly engaging with them to explain its purpose and process, and to arrange a schedule.

6. How security and privacy of data, as well as information of witnesses listed on the requested documents will be managed.

- o The audit is intended to review the transparency and adequacy of the organizations' operation, as well as to listen to their views.
 - There will be review on documents, financial status and other information required to maintain the status of organizations. The audit will also create an opportunity for the MOU to listen to the organizations' concerns.
- o Considering the afore-mentioned scope and purpose of the audit, sensitive information regarding the audited organizations is unlikely to be disclosed.
- o Still, as a precautionary measure, the MOU is keeping confidential all the information and documents acquired during the audit, and is thoroughly protecting all the personal information according to the relevant regulations.

7. How these measures comply with international human rights laws, human rights provisions in the Constitution, and the North Korean Human Rights Act/ Information on the Status of North Korean Human Rights Foundation.

<How the government action complies with International Human Rights Laws and the constitution>

- o The ROK government's measures comply with international human rights laws, the Constitution of the Republic of Korea and the North Korean Human Rights Act.
- o As explained previously, sending leaflets and materials constitutes violations of inter-Korean agreements and domestic laws, escalates inter-Korean tensions, and poses a threat to life and property of the border residents. The border residents have been bearing accumulated damage. The continuation of sending leaflets is to violate the rights of

others to exercise the senders' rights.

- o International human rights laws and the Constitution of the Republic of Korea set permissible limits on the rights of individuals. Rights should be exercised to the extent that the rights of other individuals are respected. When there is a conflict, mutual respect and balance should be ensured.
- Furthermore, Article 2 of the North Korean Human Rights Act stipulates that 'in addition to the efforts to improve human rights in North Korea, the State shall also endeavor to establish peace on the Korean Peninsula.' Accordingly, the government has responsibilities to promote human rights in North Korea, develop inter-Korean relations, and endeavor to establish peace on the Korean Peninsula.

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- o (Constitution of the Republic of Korea) Article 37 ② The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.
- o (International Covenant on Civil and Political Rights) Article 19 states that freedom of expression may be restricted by law, for respect of the rights of others, and for the protection of national security, public order and others.
- o (UN Declaration on Human Rights Defenders) Article 17 states that exercise of the rights and freedoms can be subject to limitations by law for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirement of morality, public order and the general welfare in a democratic society.
- o (North Korea Human Rights Act) Article 2 (Basic Principles and Obligations of the State) ① The State shall affirm that North Koreans have dignity and worth as human beings and the right to pursue happiness, and shall endeavor to protect and promote the human rights of North Koreans (hereinafter referred to as "improvement of human rights in North Korea").
② In addition to efforts to improve human rights in North Korea, the State shall also endeavor to establish peace on the Korean Peninsula.
③ The State shall prepare sustainable and stable finances necessary to improve human rights in North Korea.

- o Sending leaflets and materials causes a conflict between freedom of expression of the organizations and the right to life and property of the residents in the border areas. There should be due consideration of such a conflict.

- In order to ensure a balanced approach, it should be considered that freedom of expression exercised by a small number of groups by sending leaflets and materials violates the right to life and property of 2.6 million people living in the border areas. It should also be considered that freedom of expression can be expressed through other means such as inter-Korean exchange and broadcasts to North Korea. However, under the current circumstances, protecting the right to the life and property of the border residents is possible only by stopping sending leaflets.
- o The ROK government has requested organizations to stop sending leaflets and materials to North Korea while considering above mentioned reasons, and has recommended them to find other means to exercise their freedom of expression.
- o The ROK government will continue to support local NGOs' activities to promote the right to information and improve other human rights of the people of North Korea, while protecting the rights of the border residents.
- The ROK government has been supporting hosting of academic seminars and workshops, participation in overseas events, cultural activities to raise awareness of North Korean defectors, and psychological therapy sessions for defectors by the organizations working on human rights in North Korea and settlement support.
- o The audit and license review are lawful measures which are in compliance with domestic laws and international agreements.
- The ROK government respects and promotes freedom of association in accordance with its Constitution and the International Covenant on Civil and Political Rights it ratified.
- At the same time, the ROK has laws and regulations on the standards and requirements for non-profit organizations eligible for the government's administrative and financial support. The government is responsible for supervising and reviewing such organizations' activities to ensure that they are carried out in a lawful and transparent manner.
- The audit and license review are conducted based on domestic laws, and the organizations are given opportunities to suggest their views to the

government, raise an objection, or seek a legal remedy.

- Also, even if their license is revoked based on the standards and procedures set by the Korean law, the organizations would merely be excluded from receiving government support, and their freedom of association will be continued to be ensured.

<Status of the North Korean Human Rights Foundation>

- o North Korean Human Rights Foundation is to be established based on Article 10 of the North Korea Human Rights Act, to carry out inter-Korean human rights dialogue, humanitarian assistance and other activities to promote human rights in North Korea.
- o North Korean Human Rights Act stipulates that the National Assembly and the Ministry of Unification appoint the Foundation's board members. However, as the National Assembly has not recommended anyone yet, there has been a delay in establishing the Foundation.
- After the North Korean Human Rights Act was enacted in 2016, the ROK government sent 10 official letters to the National Assembly to request board member recommendations. The National Assembly has yet to make a recommendation.
- The ROK government is working with the National Assembly to ensure that the North Korean Human Foundation can be established to substantively contribute to the promotion of human rights of the North Korean people as well as to the development of inter-Korean relations, in accordance with the purpose and intent of the North Korean Human Rights Act. /End/