

Statement of Resignation

Mr. Nam-Young YOU

(Standing Commissioner of the National Human Rights Commission of Korea)

As of November 1, 2010, I hereby resign from the post of the Standing Commissioner of the National Human Rights Commission of Korea (NHRCK). First, I would like to give my sincere words of consolation, once again, to those who had to leave the NHRCK due to the reduction of its organization in April 2009 and to give my thanks to staff members who are doing their best for the NHRCK at the moment.

As is clear from incidents including the candlelight vigil incident, MBC *PD Note* incident, "Minerva" incident, state organs' surveillance activities (illegal and secret surveillance of civilians, politicians, and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression by the Defense Security Command, Prime Minister's Office, and National Intelligence Service), and torture at the Yangcheon Police Station, there have been numerous cases where, since the instatement of the current administration, the South Korean government has unjustly exercised or abused government power. From among these, state organs' surveillance of figures including civilians was a remnant of the former authoritarian government and a representative issue that damages the essence of rule of law and violates fundamental human rights. This is not a simply isolated single incident; rather, this shows retreat of overall human rights situation in Korean society and its change for the worse. Rule of law, which is originally aimed at guaranteeing human rights, is something that the people demand against the state, not something that state power orders towards the people. Consequently, the key function of a national human rights institution lies in monitoring state power so as to protect and to promote human rights for people.

Generally, national human rights institutions are destined to form a relationship of tension with any Government for the protection of human rights and at the same time, to cooperate with the Government in order to promote human rights. As is clear from South Korean state organs' surveillance activities and infringement on the freedom of expression, however, the NHRCK has failed to monitor the Government in terms of freedom and human rights. We can find some national human rights institutions in underdeveloped countries, which tend to be passive in monitoring state power, only focuses on cultural activities or touch on frivolous issues, not to be against state policies and thus failed to form a relationship of either tension or cooperation with the Government. They are usually called "alibi institutions," in the sense that they serve simply as formal institutions which pretend that there are no human rights violations. The shortcut to strengthen communication and integration in Korean society and to heighten the nation's prestige lies in activating the NHRCK instead of turning it into an alibi institution.

In the decision of the Constitutional Court of Korea (CCK) pronounced on October 28, 2010

regarding adjudication on competence dispute between the NHRCK and the Korean government, it was confirmed that the Commission only based on weak legal grounds, and is regarded as a non-regular state organ that does not even have a power to make a constitutional lawsuit on competence dispute with other state agencies. Such a problem must be resolved through legislative means including the revision of the Constitution. However, as it stands now, the Commission has failed to obtain enough trust of the people to demand the strengthening of such a weak legal basis. This is because it fails properly to exercise even the authority granted by the current National Human Rights Commission of Korea Act (NHRCK Act). As a result, the NHRCK has continuously failed, externally, to play the role properly demanded by Korean society and, internally, failed to manage the NHRCK to play its appropriate role in promoting and protecting human rights.

Concerning this crippled operation of the NHRCK, I will mention some cases: (1) Chairperson, Mr Hyun, made remarks in the National Assembly regarding the Commission's independence; (2) Chairperson unjustly rejected the Commissioners' demand for the convocation of the provisional Plenary Committee and the provisional Standing Committee stipulated in the NHRCK's managerial regulations; (3) the dismissal of a specially appointed division head was executed by the request from the Minister of Public Administration and Security; (4) Chair Hyun one-sidedly suspended meetings in the process of submitting an official statement of the Commission's opinion on the case of Yongsan and a staff member of the NHRCK who had helped to draw up this statement resigned; (5) the personal opinion of Chair Hyun and a few Commissioners on an agenda which is still under discussion in the Plenary Committee were submitted, in the form of explanations and explanatory data, to the secretaries on the Foreign Affairs, Trade, and Unification Committee in the National Assembly in February 2010 without the commissioners' resolution and pretended that it is the NHRCK's official position; (6) when five commissioners including three standing commissioners pointed out that the actions in (5) above were violations of the decision-making rules within the Commission and therefore could subject the chair and the commissioners involved to disciplinary measures, the commissioners in question in turn lodged a petition arguing that such criticism amounted to a violation of their personality rights, thus investigating the three standing commissioners as defendants, but did not take any measure regarding the violation of the decision-making rules by the chair himself and the relevant commissioners; and (7) the Plenary Committee resolved that Standing Commissioners could not submit bills to the Standing Committee. In my view, these are evidence to prove the crippled operation of the NHRCK.

This crippled operation reached their climax on October 25, 2010, when a draft amendment to the NHRCK's managerial regulations was submitted to the Committee in order to give Chair Hyun the authority single-handedly to present an agenda to the Plenary Committee without the resolution of the Standing Committee (consisting of the chair and three Standing Commissioners including two standing commissioners recommended by the ruling party and opposition parties, respectively, in the National Assembly). According to the current the managerial regulations, the Chairperson is allowed to decide which and when agendas will be presented to the Standing Committee or the Plenary Committee (the Secretariat of NHRCK has given up addressing pending human rights issues or delayed the

issues for several months). The intention of this amendment is to allow the Chairperson and Commissioners to prevent the Standing Committee from making decisions that displease them (for example, its recommendations to correct the information and telecommunication deliberation system and the trade union registration system) and all of these are intended to strengthen the chair's authority. If and when this reform bill is passed, the despotism of the chair, who directs the Secretariat, will be further strengthened, thus weakening the power of the Standing Committee, which was established to check and to balance the chair.

I have thus examined how far the Commission could go, how low it could fall since the inauguration of the current chair in July 2009. This situation stems, fundamentally, from the current Government's indifference to and contempt for human rights and, more closely, from the wrong appointment of some Commissioners, including the Chairperson, Mr. Hyun; although their qualifications are stipulated in Article 5 Clause 2 of the NHRCK Act ("professional knowledge of and experience with human rights matters"), this standard was ignored by the Government who have the power to appoint Commissioners. Because human rights are issues not of academic theories and legal techniques but of sensibility and praxis, such qualifications are crucial to the appointment of the commissioners of the NHRCK. Soon after my resignation, four commissioners are scheduled to be replaced. Whether, in this process, the Government will manage the appointment process in an open and transparent way, in accordance with the *Paris Principles* while adhering to the qualifications for the commissioners stipulated in Article 5 Clause 2 of the NHRCK Act will serve as an index to examine how much interest, if at all, the Government has in human rights.

As a standing commissioner of the NHRCK, I have endeavored, despite my poor ability, to guarantee that the Commission shall fully perform its functions and be operated as it should be. However, I had to see that my efforts finally ended up in the opposite direction I tried to go to when I had to see a draft amendment to the NHRCK's managerial regulations. I believe that the only thing I can do for the NHRCK is to resign from my post even though my term of office will expire in only 2 months. Finally, I would like to express my gratefulness to those who have helped me so much during my service on the Committee during the past 2 years and 10 months. Here ends my statement.

Statement of Resignation

Kyung-Ran MOON

(Standing Commissioner of the National Human Rights Commission of Korea)

I hereby resign from the post of the standing commissioner of the National Human Rights Commission of Korea (NHRCK) as of November 1, 2010. Having no choice but to write a statement of resignation with not even a hundred days left until the expiration of my term of office, I am truly distressed and grieved. I vividly remember the first day I went to the NHRCK as a Commissioner with full of joy and expectations in February 2008 and with the mission to take care of human rights for all. The passion I felt then is still well and alive and, at times, makes my heart beat faster. Nevertheless, I must resign today, a situation at which I cannot but feel a sense of shame.

Looking back, the first half of my service in the NHRCK were days of motivation, excitement, and satisfaction. Infected with and electrified by both my colleagues' passion and appeals made to the Commission by various people, I worked with great enthusiasm. Even when the NHRCK's decisions led to controversies, I understood that these are expressions of interest in the Commission and I tended to use this as motivation for further studies and deliberation.

In particular, during the first year of my term of office, I traveled all over the country to unearth the new agenda of "human rights for professional sportsperson" and to induce change in the actual scene. Instead of limiting the NHRCK's role to that of simply making recommendations, I sought to link investigations, counseling, education, and promotion organically and thereby to raise awareness and to bring about actual changes on the part of those who were involved in sports. Vivid, too, are my memories of going everywhere and exploring every place to deal with the violations of unmarried mothers' right to learning; I also tried to provide fundamental and institutional solutions. Also meaningful are my investigation, unprecedented in South Korea and seemingly impossible at first, of the human rights circumstances of female entertainers and subsequent exposure of the violations of their human rights.

On the contrary, recent developments have led to nothing but distress, sorrow, and despair. Following the forced reduction of the organization of the NHRCK to limit its active role in April 2009, many of my colleagues had to leave the NHRCK. Although efficient management of the NHRCK was provided as superficial reasons by the Government, I believe that my colleagues' retirement then was both unjust and forced. I still believe that the reasons and procedures provided by the Government alike are unconvincing. Once more, I would like to extend my words of comfort and consolation to those who left.

Since the appointment of the current Chairperson, Mr. Byung-Chul Hyun, the Commission seems to be withering to death after being crippled and distorted. Unlike other government organs and offices, which are under single heads, the NHRCK was established as a

commission so that it should be operated and decided by the consensus of Commissioners with diverse backgrounds. However, over the past 1 year and 4 months, in operating the NHRCK, Mr. Hyun has hardly abided by legal procedures, much less the mission of the Commission itself. Nor does his despotism consist only of one-sidedly striking the gavel and declaring the session closed when the majority of the Commissioners agree with the proposed case just because he disagrees with it. Even when he has followed the formal procedures, they are merely a camouflage for arbitrariness and tyranny, and Chair Hyun all too often changes the standards and principles of the NHRCK for his own convenience. His recent attempt to revise the managerial regulations of the NHRCK was to restrict the voting rights of the Standing Commissioners and to secure a requisite formality to ignore the Standing Commissioners' opinions. Naturally, I and my colleagues in the NHRCK have striven at times to obstruct such an anti-human rights manner of operation. However, Mr. Hyun's dictatorship has increasingly worsened so that, now, he does not at all listen to constructive and indispensable criticism from other people.

An even more serious problem is that it has become difficult for the NHRCK properly to accomplish the mission and play its role that the state has assigned to. Established to protect fundamental rights from their violations by state power, the Commission, by nature, cannot avoid discomfiting the Government. The mission of giving bitter recommendations of consultations to the Government is the reason why the NHRCK was established and why we need the NHRCK. Why the Commission emphasizes its independence is that the independence is the minimal requirement for the NHRCK to fulfill its mission as a protector of human rights; in other words, the independence is its justification for existence. I therefore have worked under the conviction that I have a mission to judge everything with the standard not of politics but strictly of human rights, regardless of whether it discomforts the Government. Indeed, if the independence is the very life of the NHRCK, the Commissioners' independence likewise is extremely important.

Regrettably, however, Mr. Hyun's ground for judgment has not been based on the standard of human rights. Rather, he has focused solely on whether or not the Commission's actions could displease the Government. The NHRCK that shrinks back not to discomfit the Government cannot realize the trust and hope of the people, who created the NHRCK as an extension of democratization. When the Commission voluntarily assumes the deplorable role merely of thinking much of what the Government says or thinks, in the long run, the existence of the NHRCK will be inevitably in question

Nor have I ever thought that the Commissioners of the NHRCK should change their judgment according to the identity and whims of their respective recommenders. Consequently, I have lightly disregarded the divisive preconceptions of the mass media or NGOs that I would be conservative just because I have been appointed by the ruling conservative party. On the contrary, I have sought to judge everything under the conviction that my mission as a commissioner on the NHRCK should be based on the standard of human rights; it must not be influenced by any political faction.

However, in a social climate where division according to ideologies and political factions is an

everyday occurrence and one is forced to take sides, my stance and attitude seem to lose its ground and validity. Moreover, I no longer play a role a human rights advocate because not the NHRCK's activities lacks both expertise and sensibility in human rights and depends solely on the standard of whether the Commission's activities displease the Government. We are not facing many issues that the NHRCK naturally and necessarily should have addressed but it has bypassed and remained silent on them. In other words, the Commission has actually contributed to the regression of the human rights situation in Korea. Indeed, recent developments within the NHRCK are such that they do not even deserve to be embellished as conflicts between the conservatives and the progressives.

In this process, many colleagues who were disappointed with the situation of the NHRCK had left the Commission. While superficially voluntary, some of these cases were in fact forced retirements. Others have mentally and emotionally left the Commission even though they are still working for the Commission. Still others are discouraged and disoriented by an anti-human rights situation where one cannot make judgments according to one's convictions but is forced to heed and to curry favor with the Chairperson. Even amidst a pitiful and heartbreaking situation, I endeavored to accomplish my mission to the end of my term of office. This is because I thought that it was a public official's duty to cope with and to maintain his or her position and duties all the more when the situation was unfavorable. I did my utmost to put the NHRCK, which was increasingly removed from its proper mission, into its original and proper place, however slightly, even to the extent of arguing with others. I also sought to discover and to resolve human rights agendas that that could be hidden bypassed by larger and more sensitive issues.

However, these series of situations have made it impossible even to play the least role and to perform the least duties as a Standing Commissioner of the NHRCK. Relying on his authority and the force of numbers, Mr. Hyun has disregarded democratic procedures, isolates and excludes both commissioners and staff members who disagree with him and even distorts the Commission's proper role. In this situation, maintaining my post and fulfilling my duties as a Standing Commissioner have become not only meaningless but also impossible. Because of my dear colleagues, I could not easily decide whether to stay or to leave. However, after months of serious consideration, through my resignation as the last resort, I seek to sound an alarm bell regarding the critical situation of the NHRCK. If this can serve as an occasion for the Commission to restore its proper role, that, I think, will be my final mission.

Finally, I really want to mention the appointment of the NHRCK commissioners. In my view, much of the current situation of the NHRCK is due to wrongful appointments. All of the commissioners including the Chairperson must be selected through transparent and open appointment procedures so that the NHRCK can consist of those who are equipped with human rights expertise, experiences, and sensibilities. In that respect, I believe that, ultimately, the Government, the National Assembly, and the Judiciary, all of which are responsible for the appointment of the commissioners, too, cannot avoid blame for the current chaos of the NHRCK.

Looking back, every moment that I wrestled with human rights agendas for almost 3 years was invaluable. In addition, there is so much I personally regret. I wonder whether I, blinded by my enthusiasm, did not only and excessively reproach my dear colleagues instead of encouraging them. I also feel bad that I may have only hurt my colleagues, however unwittingly, without fully expressing my affection and appreciation for them. I would like to confess my love to my beloved colleagues, who have worked with the utmost dedication, which, unfortunately, I was not been able to do before. I wish them and their families' happiness.