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PRESS RELEASE

To: Journalists

From: Joint-counteraction Committee for Reinstatement of Byun Hui-su, the Transgender Soldier

Person in Charge: Director Kim Hyungnam (02-7337-119, 4)

※ Based on the consultation with the below 18 civil society organizations, *the Chosun Media Group's* agencies, *the Channel A*, *the Asia Economy*, *the Segye Daily*, *the Newsis* are banned from citing this press release.

[Statement]

Forceful Discharge of a Transgender Soldier, the Human Rights Violation Acknowledged by the State

- Welcoming the National Human Rights Commission of Korea's decision to approve Byun Huisu's petition

On December 14, 2020, the National Human Rights Commission of Korea (NHRCK) held the 20th Plenary Meeting and decided that the Army's forceful discharge of Staff Sergeant Byun Huisu, a transgender soldier, was indeed a violation of human rights. This is the first time that a South Korean national agency has recognized the forceful discharge of a transgender soldier as a violation of human rights.

Staff Sergeant Byun Huisu filed a petition with the NHRCK on January 20, two days before the examination on discharge. At the same time, she also filed an application for emergency relief (urgent action) to request an halt the unfair examination on discharge. The main purpose of the petition was that it was a clear violation of human rights to conduct an examination on discharge against her will by applying the criteria for mental or physical disorder for male soldiers although Staff Sergeant Byun Huisu had already undergone sex confirmation surgery.

Back then, on January 21, the NHRCK made an extraordinary decision on emergency relief in a day acknowledged the urgency of the issue and recommended the Army Headquarters to postpone the meeting for the examination on discharge for three months. However, the Army ignored the recommendation and forced Staff Sergeant Byun to leave the military as of January 22. The only reason for the Army's discharge was that "the failure to have a male penis and testicles constitutes a disability."

The NHRCK stated that it confirmed through an investigation that Staff Sergeant Byun had undergone surgery after reporting to her superiors about the gender identity and surgery in accordance with normal procedures. In addition, there is no legal basis to regard Byun, who underwent sexual confirmation surgery, as a mentally disabled person. Also, it was viewed that the loss of male penis and testicles during the sex confirmation surgery, which is a medical operation, does not constitute "functional failure", "loss of function", or "body damage".

Therefore, the Army arbitrarily discharged the staff sergeant without legal grounds.

The NHRCK also viewed that the Army's claim that Staff Sergeant Byun was inadequate for service in the military as groundless. It pointed out that the Army is insisting on Sergeant Byun's non-conformity in active duty, citing only abstract concepts unrelated to the combat power, such as military's special features and public consensus. The NHRCK found that Staff Sergeant Byun's physical condition was not enough to be considered to be unfit for active service and that there were no service problems because of the staff sergeant's position, the tank driver, as there are already female noncommissioned officers serving in the position.

The NHRCK stressed that the issue of adjusting positions, allocating accommodation outside the barracks, and changing the deployment of troops should be resolved through the military's personnel administration system and that it is unfair to solve the issues by kicking Staff Sergeant Byun out of the military. It was also clear that Staff Sergeant Byun's service as a female soldier had nothing to do with the reflexive disadvantage of creating "innocent victims" because the military does not distinguish male and female soldiers in respect to setting a fixed number of the military personnel and separate males and females in terms of assignment of positions.

In addition, the NHRCK highlighted that the U.N. had defined the forced discharge of Staff Sergeant Byun Huisu as a violation of human rights and recommended that the military should take such concerns seriously. In last September, the South Korean Government responded to the U.N. recommendations by stating that the discharge of the staff sergeant is a lawful disposition and that the service of transgender soldiers is a matter of social consensus and that if Byun is allowed to serve in the military, the Korean military's operations and mission performance will be disordered.

It is an absurd leap of logic to assert that a young person's gender identity, who wants to work for the nation and the citizens, could disrupt the country's defense policy. After inauguration, the U.S. President Biden signed an executive order allowing transgender individuals' military service and enlistment, saying, "There is no evidence that allowing transgender military service has any significant negative impact on the military." The Ministry of National Defense itself must be well aware of the poor logic. It is a global humiliation.

The NHRCK also said that countries around the world allow transgender soldiers to serve in the military, noting that Israel, a country with conscription system similar to Korea, provides medical insurance for soldiers who have sex confirmation surgery in service, including the cost for surgery, hormonal therapy and plastic surgery, and that Germany has a transgender commander, and that Canada and the U.K. also provide transgender soldiers with financial aids for medical treatment. It requested the military to take steps to improve system for transgender military service.

The Joint-counteraction Committee for Reinstatement of Byun Hui-su welcomes the decision of the NHRCK. The Ministry of National Defense should accept the recommendation even now to clean up the shameful mistakes. The Joint-counteraction Committee expects the judiciary, which has not designated a trial date for the initial hearing in six months, to actively take into

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account the NHRCK's decision and begin the trial and rule cancellation on the forceful discharge so that Staff Sergeant Byun Huisu can return to the military as soon as possible.

[Annex. The Decision of the NHRCK]

1 February 2021

Joint-counteraction Committee for Reinstatement of Byun Hui-su, the Transgender Soldier

Lawyers for Public Interests, Center for Military Human Rights Korea, Dawoom – Together for Change, Preparation Group for Sexual Minority Committee of the Democratic Party, Social and Labor Committee of the Jogye Order of Korean Buddhism, Rainbow Jesus, PFLAG Korea, Rainbow Action Against Sexual-Minority Discrimination of Korea, Sarangbang, Sexual Minority Committee of the Justice Party, People's Solidarity for Participatory Democracy, Catholic Human Rights Committee, LGBTQ Youth Crisis Support Center "DDingDong", Free Trans Right, Human Rights Center of the National Council of Churches in Korea, Korea Women's Association United, Womenlink, Solidarity for LGBT Human Rights of Korea, a total 18 CSOs.