



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

KGV/1/2013

Reference: Communication From Special Procedures Joint Allegation Letter AL G/SO
214(67-17) Assembly & Association (2010-1) G/SO 214(107-9) KOR
2/2012

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, and in response to the latter's note verbale dated 30 May 2012, has the honor to submit, as attached, the Republic of Korea's response to the letter of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders.

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

OHCHR REGISTRY

Encl.: as stated

14 JAN 2013

Recipients: SRD.....

Geneva, 2 January 2013

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Palais des Nations
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The Government of the Republic of Korea's response to the letter dated 30 May 2012 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, and 16/5

Ref: AL G/SO 214(67-17) Assembly & Association (2010-1) G/SO 214(107-9) KOR 2/2012

1. With regard to the joint allegation letter sent on 30 May 2012 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, the Government of the Republic of Korea hereby submits its response:

Information regarding the alleged cases in the letter

2. Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], and Father [REDACTED] were prosecuted by due process of law and are on trial as of October 2012. The following information has been established through investigations conducted by the police and the public prosecutor's office and the court trials.

3. On 6 April 2011, Mr. [REDACTED] was arrested in the act for his engagement in obstructing the construction of a naval base on Jeju Island and for his violent resistance against the police officers' execution of their duties. He assaulted a police officer, breaking his eye glasses and biting his leg which caused an injury requiring ten days of treatment. Since a detention warrant was issued on the next day of his arrest and he stood trial in custody, the 57 days in which he was detained was not arbitrary and was lawful in accordance with the *Criminal Procedure Act*.

4. On 24 August 2011, Mr. [REDACTED] climbed onto and occupied a crane at the construction site of the naval base in an attempt to obstruct the construction work. This occurred while he was still on probation for his prior engagement in a similar obstruction, which together could not be deemed as acts of peaceful protests. Mr. [REDACTED] also refused to heed repeated requests made by police officers at the site to descend from the crane, which led to his arrest in the act for impeding the performance of duty. At his arrest, the residents of the village and civic activists scuffled with the police and blocked nearby roads with cars, preventing the police officers from leaving the naval base construction site for more than ten hours. Given this situation and circumstances surrounding the incident, it was deemed inevitable to conduct a custody investigation of Mr. [REDACTED]. Thereafter, he was released on 23 November with a court sentence resulting in a fine of 10 million KRW. He is on appeal as of October 2012.

5. Mr. [REDACTED] was alleged to have been arrested while protesting with Mr. [REDACTED] on the crane on 24 August 2011, but this claim has been determined to be false. Mr. [REDACTED] was sentenced to probation on 17 July 2011 after being prosecuted in custody on several charges of obstructing the construction. He was also sentenced to a fine of KRW 100,000 for violating *the Minor Offenses Act* by intruding thirteen times in total from 3 September to 11 October 2011 into a restricted area designated by the court. He is on appeal as of October 2012.

6. On 20 February 2012, Mr. [REDACTED] and three others trespassed on the construction site, which was a restricted area. Having climbed up on a rock in the site, they set up camps and cooked thereon while hanging a placard that stated 'Stop the construction of the naval base.' On 1 April 2012, Mr. [REDACTED] was arrested in the act for damaging and cutting his way through the barbed wire fences installed in the coastal area. A warrant was issued on 3 April 2012 and he was indicted on 13 April. Bailed in *ex officio* on September 28 by the court, he is on trials without detention as of October 2012. His injury was caused due to his fierce resistance to arrest, as he crawled under the police van refusing to come out when the police were in the process of escorting him to the van. As Mr. [REDACTED] claimed to have been injured after his arrest, he was sent to 'Seogwipo Hospital' for medical treatment before investigations took place.

7. On 30 September 2011, Father [REDACTED] was arrested for assaulting police officers and thereby impeding the execution of their duties. His assaults included the kicking of genitals, scratching of ears, slapping, and punching in the solar plexus. Having been released on 2 October 2011, Father [REDACTED] climbed over the barbed wire fences installed at the construction site and trespassed on the area on 6 October 2011. When personnel working for the naval base restrained him, he attacked the said personnel. He was not arrested on that day.

8. On 6 April 2012, Father [REDACTED] swore at a naval police officer, who gave a verbal warning to two of the protestors who dived into the sea, and jostled the officer several times, during which he lost his balance and fell from a tetrapod. The police officer attempted to grab Father [REDACTED] but failed. Other police officers who were nearby tried to rescue him, and called the emergency service 119.

9. The use of explosives was scheduled in order to blast ground rocks in the coastal area of the construction site for construction work on 7 March 2012. Concerned with the possibility of protests escalating fiercely and the risk of injuries incurred to protestors if they enter into the construction site, a number of police units were deployed. Meanwhile, Pastor [REDACTED], Father [REDACTED] and other protestors had already secured crowbars and cutters to break fences. Some of the protestors also tied themselves up together with chains to hinder construction vehicles from accessing the construction site. Those who managed to make two holes with prepared tools and intruded into the construction site were prosecuted and sentenced to probation. They are on appeal as of October 2012.

10. On 16 April 2012, Father [REDACTED] and eight other protestors obstructed the access of construction vehicles to the construction site by parking their rental cars at two spots near the exit of the site. As some protestors made a human barrier by interlinking their arms through PVC pipes in attempt to block the access of vehicles to the site, 119 fire fighters attempted to use an 'air saw' to break them up, but stopped due to safety concerns. With the persuasion of police officers, some protestors voluntarily stopped the protest. Related cases are on the initial trial as of October 2012.

11. Given such illegal acts of protestors, the police issued a notice of prohibition of assembly and association near the construction site from 15 April 2012 to 12 May 2012, in accordance with Article 8(1) of the *Act for Assembly and Association*.¹ The Council of Gangjeong village filed for an injunction against the notification to the Jeju District Court, but the court dismissed the case on 11 May 2012 on the grounds that 'there is no reasonable concern of irreparable damage to occur due to retaining the effectiveness of prohibition notification, nor any urgency to suspend it.'

Comments on the deportation of foreigners participating in assembly and association, and on disapproval of entry against activists

12. Mr. [REDACTED] and Ms. [REDACTED] foreign nationals staying in the Republic of Korea, obstructed the police officers' execution of their duties by cutting the fences at the construction site, together with other protestors. For this reason, Mr. [REDACTED] was arrested in the act. The police requested a warrant to be issued against him to a prosecutor but the prosecutor in charge ordered the investigation team to deal with this case in accordance with the *Immigration Control Act* instead of requesting a warrant to the court. Accordingly, Mr. [REDACTED] was transferred to the Immigration Office for deportation. Considering the advanced age of Ms. [REDACTED], the Government asked her to leave the country within a certain period of time, while allowing her some time to say farewells to her Korean colleagues. Meanwhile, three activists of American Veterans for Peace, who attempted to enter the country to participate in the protests against the construction of the Jeju civilian-military complex port, were denied entrance to the country. The disapproval was decided in accordance with Article 11 of the *Immigration Control Act*, considering that 'there are reasonable grounds to acknowledge concerns that the Republic of Korea's interests or public safety could be harmed'.²

13. International law recognizes that certain decisions pertaining to the approval of a foreigner's entry into the country are within the discretion of that state with the exception of cases in which entry has been denied as a result of discrimination based on factors such as race, and as long as those reasons do not infringe on rights such as those related to right to life,

escape from persecution, or emergency assistance. This position is presented in paragraph 5 of the General Comment 15, *The position of aliens under the Covenant*, by the Human Rights Committee and is the general opinion in international migration law. Mr. [REDACTED] and Ms. [REDACTED] were not arrested and judicial measures were not carried out against them despite the fact that they had committed a crime under national law, and they were either given a deportation order or a request for departure. The procedure for carrying out the deportation order against Mr. [REDACTED] was in accordance with relevant national and international law.

The legal grounds for the arrest and detention of the persons mentioned in the letter

14. Article 12 of the Constitution of the Republic of Korea stipulates that no person shall be arrested, detained, searched, seized or interrogated except in cases provided by law. Arrest and detention are carried out strictly in accordance with the *Criminal Procedure Act*.

15. As for the cases mentioned in the letter of the Special Rapporteurs, the persons involved were arrested in accordance with Article 212 of the *Criminal Procedure Act*, as they were considered to be 'those who are in the act of committing or who have just committed a crime' according to Article 211 of the *Criminal Procedure Act*.³ Upon arrest, all were notified of the essential facts of the suspected crime, reasons for the arrest, as well as the right to legal counsel, in accordance with Article 200(5) of the *Criminal Procedure Act*.⁴ Article 201 of the *Criminal Procedure Act* stipulates that a suspect may be detained only when a warrant of detention is issued by a judge of the competent district court upon the request of a public prosecutor.⁵ If a warrant of detention is not requested or is not issued upon request, the suspect should be released immediately. Furthermore, according to Article 201(2) of the *Act*, a judge who receives a request for a warrant of detention should immediately conduct a hearing, and a defense counsel can make statements on behalf of the suspect at the hearing.⁶ Such a process as outlined by the *Criminal Procedure Act* complies with the international standards provided for by Article 9(3) of the International Covenant on Civil and Political Rights, and no person was placed in a situation of arbitrary detention in the cases mentioned in the letter.

16. According to Article 202 and 203 of the *Criminal Procedure Act*, in cases where a judicial police officer detains the suspect, the suspect must be transferred to the prosecutor

within ten days and if a public prosecutor detains the suspect or receives the suspect from a judicial police officer, the suspect should be released if a public prosecution is not instituted within ten days.⁷ Only when there are considerable reasons to continue the investigation, the detention period can be extended within ten days with permission granted by the judge.

17. When a suspect is prosecuted, the suspect can be detained by the decision of the court. In such cases, the suspect stands trial in the state of detention as deemed necessary for the trial as prescribed in Article 92 of the *Criminal Procedure Act*.⁸ Therefore, cases mentioned in the letter in which a number of persons are indicated to have been detained for 57 days, or have been detained until the present time, are indicative of a period which includes days of detention during the investigation stage as well as the trial period, according to the procedures outlined by the *Criminal Procedure Act* as explained above; in the case that these suspects are sentenced to prison, the period of detention is included in that of the sentence itself.

18. The arrested person is informed of the right to an attorney, and the suspect or defendant may appoint a defense counsel.⁹ If the defendant is detained but no defense counsel is available, the court must appoint a defense counsel *ex officio*.¹⁰ Such regulations were definitely followed in these cases. Meanwhile, stationed lawyers from civil society at the Jeju civilian-military complex port construction site provided legal services for the protestors. For detained individuals, meetings with defense counsels were provided according to the status of the prisoner on trial, and the time or frequency of these meetings was not restricted to ensure the right to a fair trial, while visits from family members or close friends were permitted once a day. For example, in the case of Mr. [REDACTED] (born in 1988, male), who was arrested for assaulting a police officer at the entrance of the naval base agency on 9 August 2012, at around 16:10, Attorney Shin Ok Baek attended the investigation process upon his request for attendance of an attorney and as such the right to an attorney outlined by the *Criminal Procedure Act* was ensured. Also, while in the state of arrest by police, visits by the suspect's family members and friends, in addition to visits by the attorney, are also being permitted to ensure full compliance with human rights norms. For instance, a protestor who was arrested for assaulting a police officer was visited by four of his fellow protestors, (members of the Korean Confederation of Trade Unions) from 22:30 to 23:00 on 3 September 2011 at the Seoguipo Police Station; and ten individuals who were arrested for causing

damage to property and trespassing on the construction site were allowed visits by three persons including Father [REDACTED] and Father [REDACTED] from 17:40 to 18:15 on 4 October 2011 at Seoguipo Police Station.

The activities of the National Human Rights Commission and the results of investigations carried out in relation to the alleged cases in the letter

19. Meanwhile, a total of twenty-five complaints related to assembly and demonstration at the construction site of a naval base on Jeju Island were submitted at the National Human Rights Commission of Korea (NHRCK) - three were dismissed as a result of investigation, four were denied, one was solved during investigation, four were accepted, and eleven are under investigation as of October 2012. The four accepted cases underwent combined examination and the NHRCK pointed out that some demonstrators were injured because the police couldn't provide sufficient safety measures in breaking PVC pipes with which the demonstrators were tying themselves together. Accordingly, the NHRCK made recommendations to the police to provide a solution that would prevent recurrence of these types of cases in the future. Aside from these cases, there were two requests submitted for emergency relief in accordance with Article 48 of the *National Human Rights Commission Act*. The protestors who trespassed on to the construction site requested water and food, which were provided to them by the NHRCK inspector who was sent to the site.¹¹

20. Besides, the NHRCK sent a total of 22 inspectors to the Jeju protest site on three different occasions - six during 1-3 September 2011; seven during 8-9 March 2012; and nine during 31 March-2 April in 2012 - for the purpose of suppressing the use of force by police and managing the protestors' violent actions.

21. Other charges and accusations that were raised related to the use of force by police at the construction site of the Jeju civilian-military complex port are as follows:

- A. Investigations by prosecutors on the case in which police officers were charged for using violence against Mr. [REDACTED] on 6 April 2011 found that police officers hit twice and suppressed Mr. [REDACTED] who was violently resisting arrest, and whose actions included the breaking of the eyeglasses of the police officer. Yet the

indictment was suspended as there were considerations to be made in light of situational factors.

- B. After conducting a prosecution investigation on the complaint claiming that a police officer swore and hit the video camera of a person recording the site during a struggle on 9 August 2011, there were discrepancies found between testimonies of the complainant and the suspect. In addition, there was no clear evidence such as recorded video clips or any testimony from a witness. The police officer therefore was exempted from indictment due to insufficient evidence.
- C. Regarding Father [REDACTED]'s accident on 6 April 2012, an investigation following the complaint claiming that Father [REDACTED] was injured by a police officer pushing him, showed that there were discrepancies in the testimonies from both sides, and there was not enough evidence to prove the charges, thereby resulting in non-prosecution.
- D. After conducting investigations on the complaint claiming that the Coast Guard ship overturned the kayak the protestors were on and that some members of the Coast Guards assaulted the protestors on 26 January 2012, it was found that the kayak was flipped while the police officers were struggling to haul out the protestors, simply because the kayak lost its balance. As the members of the Coast Guards did not intentionally flip the kayak, they did not commit a crime and as the accusers could specify neither the suspect nor specific details about the assault, the case was dismissed.

Conclusion

22. Unlike the allegations of the authors, the construction of Jeju civilian-military complex port is a very important national project with a total cost of 1 trillion KRW of the national budget. After a comprehensive examination of all aspects such as national security, marine transportation and economic development, this project has been carried out since 2006 in compliance with the strict administrative procedures under relevant law. The Government

of the Republic of Korea considers that the decision to carry out the project is irrelevant to the merits of the letter.

23. International human rights law stipulates the government's obligation to assure the right to peaceful assembly. In the case of violent protest or violation of other peoples' rights, it is understood that there can be relevant restriction against such behaviors, which are subject to punishment under fair judicial procedures. The cases enumerated in the letter include obstruction of legitimate performance of business and causing financial damages to others, along with severe assaults by the protestors. The police officers at the site of the protest put forward significant efforts to persuade the protestors to disperse, and refrained from using coercive measures through actions such as taking in the protestors without using handcuffs even when illegal actions were taking place. Rather, there were a number of police officers who were bitten or assaulted by the protestors, and a female police officer who was moving the female protesters even fainted after receiving a kick by a protestor in the chin. In order to prevent, as much as possible, the arresting of protestors on the spot, police officers moved protesters aside from the roadway only when construction vehicles had to pass. Before being moved, the protestors were warned through loudspeakers at least three times at intervals of five minutes, after first being persuaded to dissolve voluntarily.

24. The Korean Government guarantees the freedom of peaceful assembly and demonstration to the greatest extent possible and strictly observes the procedures of investigation and legal proceedings under the *Criminal Procedure Act*, which is compliant with the Constitution and international law. During the criminal investigation or prosecution procedures, the Government has fully assured the suspects and defendants of their right to assistance of counsel, as well as the right to receive medical treatment in cases of the detainees, and the right to visitation by family members and friends.

/End/

¹ Assembly and Demonstration Act, Art. 8(1) : The head of the competent police authority who has received the report as provided in Article 6(1) may, if such outdoor assembly or demonstration as reported to him/her falls under any of the following cases, notify its organizer of the ban of the assembly or demonstration within 48 hours after the receipt of the report: Provided, That in cases where an assembly or demonstration poses a direct threat to public peace and order by indicting collective violence, threats, destruction, arson, etc., he/she may, in respect of the remaining thereof even after a lapse of 48 hours from the receipt of the report.

² Immigration Control Act, Art. 11(1) : The Minister of Justice may prohibit any of the following foreigners from entering the Republic of Korea:

1.-2. (omitted)

3. A person deemed highly likely to commit any act detrimental to the interests of the Republic of Korea or public safety

³ Criminal Procedure Act, Art. 212 (Arrest of Flagrant Offender)

Any person may arrest a flagrant offender without a warrant.

⁴ Criminal Procedure Act, Article 200-5 (Notice of Arrest and Suspected Crime)

Every public prosecutor or judicial police officer shall, whenever he/she arrests a suspect, notify the suspect of the nature of the suspected crime, the reasons for arrest, and the right to appoint defense counsel, and shall also give an opportunity to defend him/herself.

⁵ Criminal Procedure Act, Art. 201 (Detention)

(1) In cases where there is a good reason to believe that a suspect has committed crimes and if he/she falls under any of subparagraphs of Article 70 (1), a public prosecutor may detain the suspect for detention with a warrant of detention issued by a judge of the competent district court upon request of the public prosecutor, and the judicial police officers may arrest the suspect with a warrant of detention issued by a judge of the competent district court upon request by a public prosecutor who has been requested by the judicial police officers for the warrant: Provided, that with regard to offenses punishable with a fine not exceeding 500,000 won, disciplinary lockup, or minor fine, such arrest shall be effected only in cases where the suspect has no fixed dwelling.

⁶ Criminal Procedure Act, Art. 201-2 (Request for Warrant of Detention and Examination of Suspect)

(1) A judge shall, upon receiving a request for a warrant of detention of a suspect arrested under Article 200-2, 200-3, or 212, hold a hearing to examine the suspect without delay. In this case, such hearing shall be held by the day following the date on which the warrant of detention is requested, unless there is any extraordinary reason otherwise.

(2)-(3) (omitted)

(4) The public prosecutor and the defense counsel may appear before the court on the date of hearing for examination under paragraph (3) to make a statement.

⁷ Criminal Procedure Act, Art. 202 (Detention Period by Judicial Police Officer)

In cases where a judicial police officer detains a suspect, the suspect shall be released if he/she is not transferred to the public prosecutor within ten days.

Article 203 (Detention Period by Public Prosecutor)

If a public prosecutor detains a suspect or receives a suspect from a judicial police officer, the suspect shall be released if a public prosecution is not instituted within ten days.

⁸ Article 92 (Detention Period and Its Renewal)

(1) The period of detention shall be two months.

(2) Notwithstanding paragraph (1), the period of detention may be renewed by a court ruling only twice by two months each time for each grade, if particularly necessary to continue detention: Provided, that it may be renewed three times or less if it is unavoidable and if it is necessary for an appellate court to hold an additional hearing for the examination on the evidence requested by a defendant or a defense counsel, a written statement submitted to supplement the cause of appeal, or for any other reason.

(3) Any period during which the proceedings of a public trial is suspended and period for arrest, confinement or compulsory appearance before the institution of public trial in accordance with the provisions of

Articles 22, 298 (4), 306 (1) and (2), shall not be added to the computation of the period mentioned in paragraphs (1) and (2).

⁹ Article 30 (Persons Entitled to Appoint Defense Counsel)

(1) The defendant or the suspect may appoint a defense counsel.

(2) The legal representative, the spouse, a lineal relative, or a sibling of a defendant or a suspect may independently appoint a defense counsel.

¹⁰ Article 33 (Defense Counsel Assigned by Court)

(1) In any case falling under any of the following subparagraphs, if no defense counsel is available, the court shall appoint a defense counsel *ex officio*:

1. When the defendant is placed under arrest;

¹¹ National Human Rights Commission Act, Art. 48 (Recommendation of Urgent Relief Measures)

(1) The Commission may, in case after receiving any petition it deems that it is considerably probable any violation of human rights or discriminatory acts subject to the investigation is in progress and it is likely to cause any damage difficult to recover if left as violated, recommend the respondent or the head of the institution to which he/she belongs to take measures falling under any of the following subparagraphs at the application of the petitioner or sufferer or *ex officio* before making a decision on the petition”

1. Provision of medical service, meal or clothing, etc.;
- 2.-6. (omitted)