



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

KGV/17/2016

Reference: The Joint Urgent Appeal from Special Procedures (UA KOR 2/2015)

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) and, in response to the latter's note verbale dated 11 June 2015, has the honor to submit, as attached, the Republic of Korea's response to the joint urgent appeal from special procedures.

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 Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurance of its highest consideration.

Encl.: as stated

Geneva, 1 February 2016



Special Procedures Branch (c/o Karim Ghezraoui)
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**Response of the Republic of Korea to the Joint Urgent Appeal
from UN Working Group on Arbitrary Detention, Special
Rapporteur on Freedom of Expression, Special Rapporteur on
Peaceful Assembly and Special Rapporteur on the situation of
Human Rights Defenders**

Reference: UA KOR 2/2015

1. In regard to the joint urgent appeal to the Government of the Republic of Korea by UN Working Group on Arbitrary Detention, Special Rapporteur on Freedom of Opinion and Expression, Special Rapporteur on Freedom of Assembly and Association, and Special Rapporteur on Situation of Human Rights Defender, the Government of the Republic of Korea responds as hereinafter.

Factual Information

2. As of the first anniversary of the sinking of *Sewol* Ferry on April 16, 2014, *4.16 Solidarity* headed by Park Rae-Gun reported that they would hold an outdoor assembly, in which the members of the group, citizens, and families of *Sewol* Ferry victims were to participate in order to urge ensuring of accountability for the sinking of *Sewol* Ferry, and would not proceed to march. The actual assemblies were held on April 11, April 16, April 18, and May 1 and 2. They entered the road heading toward the Blue House ignoring the police line and warning by the police on maintaining the order during the course. Some of those who attended the assembly attacked a number of police officers and damaged public property.¹

¹ Damages to the Police

① *Sewol* Ferry Demonstration on April 18, 2015

- Personal injuries

Category	Number of the injured	Degree of injury	Details
Total	74	Minor injury	.Bruise 50, Abrasion 13, Spain 5 .Others 6(Cracked teeth, dislocation, etc.)
Police Officer	24		
Conscripted Police	50		

- Material damages

Item	Number	Details

3. Moreover, they were arrested for attacking police officers which resulted in injuries, while fully concealing their faces with masks, caps, and jackets in order to avoid evidence collection on violent acts by the police and facilitate escape and destruction of evidence. They were detained and prosecuted upon the warrant of detention lawfully issued by the court after they were arrested. Among those arrested as set forth herein, the following are the details on arrest and detention of those who alleged their human rights were violated in the current urgent appeal.

- On the ground of disobeying disperse order of the police after occupying roads including *Jongno Sejong-daero* with other two thousand people starting from 20:05 on April 11, 2015, *Hyun-sik Kim*, the Public Welfare Director of the Korean Alliance for Progressive Movements, and *Hung-Jae Ham*, the Autonomous Unification Director of the Seoul Alliance for Progressive Movements, were arrested as a flagrant offender on April 11 and were prosecuted on May 14, 2015 after a warrant of detention being rejected on April 15, 2015, and issued on April 30, 2015, upon re-request.

- On the ground of attacking police officers by punching police officers and throwing the taken safety fence at police officers at 18:25 on April 18, 2015, with masking his face, for the purpose of breaking the police line through an alley beside the Sejong Center for Performing Arts with other two thousand people, *Kwang-cheol Kang* was arrested as a flagrant offender on the same day, detained under warrant on April 22, 2015, and prosecuted on May 11, 2015.

Vehicles	71	Bus	67 (Out of control 7, partial breakdown 45, lacquered 15)
		Command car	2 (damage on side mirror)
		Barricade truck	2 (lacquered)
Police Equipment	368	Item	368 items of 32 categories including camcorder, radio, suppression equipment, etc. (robbed<294>, damaged<74>)
		Amount	60,570 thousand won
Personal Belongings	133	Cash	235 thousand won
		Items	133 items of 23 categories including pulse, clothing, electronic equipment, instant noodle, etc.
		Amount	11,890 thousand won

- ② Damages occurred in the *Sewol* Ferry Demonstration on May 1, 2015
- Personal injuries : 33 persons injured (minor injuries for all)
 - Material damages: 12 vehicles damaged, 126 items of 14 equipment robbed or damaged, personal belongings lost or damaged (250,000 won)

- On the ground of illegally occupying the *Gwanghwamun* rotary road with other five thousand people at 20:10 on April 18, 2015, *Jang-hee Kwon* was arrested as a flagrant offender on the same day, detained on April 22, 2015, and prosecuted on May 6, 2015.
 - On the ground of attacking a police officer by striking him on the neck with a hand on the *Anguk* rotary at 09:45 on May 2, 2015, *Gi-ho Lee* was arrested as a flagrant offender on May 2, 2015, detained on May 5, 2015, and prosecuted on May 19, 2015.
 - On the grounds of tying the police vehicle with a rope, pulling it, and damaging the vehicle window with other dozens of demonstrators at the front of the *Sueun* Assembly House Building in *Jongno-gu* from 17:00 to 18:15 on May 1, 2015, *Kil-Soo Ahn*, a member of the Metal Industrial Union, was arrested on May 1, 2015, detained on May 5, 2015, and prosecuted on May 26, 2015.
 - Lawyer *Jumin Park* has been summoned by the Seoul Jungbu Police Station three times on charges of disrupting traffic on the Seoul Jung-gu Taepyung-Ro streets during the *Sewol* Ferry demonstrations at 21:00-23:42 on April 11, 2015, and the police have sent the case to the Prosecutors' Service to be indicted on charges of general obstruction of traffic on August 3, 2015. The case is currently being investigated by the Prosecutors' Service.
 - Lawyer *Kwon Young-guk* has been arrested on charges of obstructing traffic of the Gwanghwa-mun and Taepyung-Ro district of *Seoul Jung-gu*, disobeying the head of security's orders to dissolve the protest, and interfering with governmental officials' executions of duties by assaulting police officers at 15:50-16:30 and 18:20-20:20 on April 18, 2015. A warrant of arrest was filed for on April 20, 2015 but was rejected on April 22, 2015. Kwon has been charged without detention for interference with government officials' executions of duties on July 23, 2015 and currently is on trial.
4. In the letter, it is argued that traffic was restricted and water cannons mixed with tear gas were sprayed by the police despite the fact that the demonstration was peaceful. However, the illegal and violent demonstration proceeded by illegally blocking traffic and assaulting police officers, and the police had acted lawfully in executing their public duties. The demonstrators' illegal acts have taken over the main streets of Seoul, the capital of the Republic of Korea, disrupting traffic for 30 minutes to 5 hours. The particular district traffic has been regulated and the demonstrators were induced to

dissolve because the traffic was paralyzed. Among the 10,000 demonstrators, only a small minority was arrested, who committed illegal acts such as assaulting police officers and obstructing roads by leading an illegal demonstration (20 people on April 11, 10 people on April 16, 100 people on April 18, and 42 people on May 2).

5. Because in reality the demonstration degenerated into an illegal demonstration, all of the demonstrators are accusable of general obstruction of traffic (*Criminal Act* Article 185) and of violating the *Assembly and Demonstration Act* (*Assembly and Demonstration Act* Article 24(5)). For some of the demonstrators, the crime of special obstruction of public duty (*Criminal Act* Article 144) applies, but they were arrested exceptionally when illegality was serious and the criminal acts were grave.

Complaints for Those Detained on the Ground of Participating in the Demonstration

6. Despite the fact that the demonstration turned illegal, no one has been detained for the reason of participating in such demonstration. Meanwhile, one of the demonstrators, who participated in the demonstration on May 1, 2015 and claimed to be damaged by the water cannon fired by the police, raised a constitutional appeal to the Constitutional Court for infringement on fundamental rights by the acts of the police. In addition, Lawyers for Democratic Societies sued for indemnity insisting on unlawfulness of the acts of the police. In addition, there is a fact that a petition for clemency was submitted during a criminal trial of a detained person.

Legal grounds of for the Arrest and Detention and the Compatibility with Relevant International Norms

7. The Article 12 of the Constitution of the Republic of Korea stipulates the legal requirements of arrest and detention, the principle of due process, the rule of warrant and exception to the rule of warrant, the right to assistance of counsel when arrested and detained, the right to be informed of the right to assistance of counsel, and review of the legality of detention,² and *Criminal Procedure Act* specifically prescribes the rights set

² (1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by Act. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by Act and through lawful procedures. (Article 2 omitted) (3) Warrants issued by a judge through due

forth herein and due process of law.³

8. The provisions of the Constitution and *Criminal Procedure Act* set forth herein correspond with Article 9 of UN International Covenant on Civil and Political Rights. In reality, the police induced to voluntarily disperse in accordance with the relevant acts through notifying illegality of the assembly and warning for dispersion, arrested them informing the facts constituting the offence for their continued crimes of attack on the policemen and occupation of the public road, the right to remain silent, and the right to assistance of counsel when they did not obey to voluntarily disperse, and judges interrogated the cases after arrest. In addition, in regard to detention after prosecution, a court, an independent judiciary, decided as such with the view that there existed reasons for detention considering the seriousness of crime, assessment of recidivism, and concern about victims and major persons for reference with the substantiality of allegation, consistency in housing, concern to destruction of evidence, flee or potential to flee, so that the detention is considered lawful.

Legal Grounds for Use of Force against Protestors and Compatibility with International Human Rights Law

9. Although the demonstration may be deemed as an expression of the individuals' opinions and an exercise of the freedom of assembly in solidarity with others, it is set clear by international human rights norms, especially the UN Declaration for Human Rights

procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: Provided, That in a case where a criminal suspect is an apprehended flagrante delicto, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an ex post facto warrant. (4) Any person who is arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as prescribed by Act. (5) No person shall be arrested or detained without being informed of the reason therefor and of his right to assistance of counsel. (rest of the article omitted) (6) Any person who is arrested or detained, shall have the right to request the court to review the legality of the arrest or detention. (Article 7 omitted)

³ The *Criminal Procedure Act* prescribes that the rule of warrant shall be applied in regard to arrest and detention (Article 200-2 and 201), that whenever arresting a criminal suspect, every prosecutor or senior judicial police officer shall notify the criminal suspect of the gist of the suspected crime, the reasons for arrest, and the right to appoint defense counsel and shall also give an opportunity to vindicate himself (Article 200-5), that emergency arrest (Article 200-3) and arrest of flagrant offender (Article 212 and 211) are exceptionally allowed. Even in cases of emergency arrest and arrest of flagrant offender, a warrant of detention shall be requested within 48 hours from the time of arrest and if such request for the warrant of detention is not made within 48 hours from the time of arrest, the criminal suspect shall be released immediately (Article 200-2, 201, and 213-2). In addition, when a warrant of detention is requested, an interrogation by a judge shall certainly be executed (Article 201-2), and after arrest and detention, a suspect shall request a review of legality of arrest and detention to a court (Article 214-2), which constitute an institutional strategy of twofold review by an independent judiciary. The act also stipulates that, in case where a suspect is interrogated, a participation of a defense counsel is guaranteed (Article 243-2), and in case of suspect interrogation before arrest and review on legality of arrest and detention, a defense counsel shall certainly participate (Article 201-2, Article 214-2, Article 33).

Defenders, that this kind of act shall not become violent assemblies. Given that Article 21 of the International Covenant on Civil and Political Rights guarantees the peaceful assembly, violent demonstration cannot be seen as proper exercise of the rights protected by the Covenant. Also, Article 5(1) of the Declaration on Human Rights Defenders only protects the right to 'peaceful assembly.' Violence during the process of exercising rights is not protected by international human rights norms.

10. The police executed legal force on these persons after implementing other procedures including prior warning in accordance with the *Act on the Performance of Duties by Police Officers*. The Act stipulates that police officers may use police equipment while performing their duties(Article 10(1)). "Police equipment" includes water cannon(Article 10(2)). In addition, *Standards for Use of Harmful Police Equipment of Presidential Decree* specifies *Act on the Performance of Duties by Police Officers* by prescribing that the police may inevitably use water cannon upon a decision by a person in charge on site, being restricted to the necessary minimum, in order to prevent any harm in life or body of other person or a police officer and any damage in property and public facilities(Article 13(1)).
11. For your reference, regarding the act of establishing a vehicle-wall-blockade by police, Seoul Central District Court ruled "The purpose, situation, time, and measures of establishing a vehicle-wall-blockade being considered, it was a lawful performance of official duties to establish a wall of police near the Sejong Center for the Performing Arts on April 18, 2015 during the *Sewol* Ferry Demonstration" in the criminal cases including the special obstruction of performance of a governmental official in the execution of his duties by *Kwang-chul Kang* who were one of the assembly participants relevant to the appeal(Seoul Central District Court August 13, 2015, Rule 2015 Collegiate Division 373 Decision).⁴

⁴ Legality of establishing a wall of police

The purpose, situation, time, and measures of establishing a wall of police as referred hereinafter being considered, it was a lawful performance of official duties to establish a wall of police near the Sejong Center for the Performing Arts at the time of committing the offence relevant to the ruling.

- a) Sung Sang-young reported on April 16, 2015 under the name of '416 Solidarity' headed by Park Rae-gun that outdoor demonstration would be held from 12:00 to 22:00 on April 18, 2015 in Seoul Plaza, in which about 8,000 people including members of the '416 solidarity', citizens, and families of the Sewol Ferry victims participate. There was no schedule for demonstration or marching outside Seoul Plaza since it was written 'none' in the 'method of demonstration (marching)' and 'route of demonstration (marching)' of the aforementioned report.
- b) However, about 6,000 demonstrators diverged from pavements and entered Sejong-daero at 16:30 on April 18, 2015, ignoring the police line which the police established using LED PL, and thus police officers warned the

Measures to Guarantee Physical and Psychological Integrity of Persons who Exercise the Freedom of Legitimate Assembly and Peaceful Association

12. The Government of the Republic of Korea thoroughly guarantees peaceful and lawful assemblies which do not harm life and body of other persons and public security and flexibly mediates regarding place and date through communications with police officers in charge and liaison persons of assembly groups. In addition, the Government arranges medical teams on site in case of assemblies in large scale, doing the utmost efforts to protect the right and safety of the people.
13. According to the *Assembly and Demonstration Act*, the police orders to disperse three times or more after demanding voluntary dispersion in cases of causing serious harms to others by obstructing traffic or making noise, or clearly threatening the maintenance of public order. According to the *Standards for Use of Harmful Police Equipment of Presidential Decree*, the police announce the warning before using force in efforts to protect the participants of the assembly.

demonstrators several times to evacuate the roadway and move using the pavements. Nevertheless, the demonstrators marched towards the direction of Gwanghuamun Gate, ignoring the warnings of the police and occupying the whole roads of Sejong-daero.

- c) On April 7, 2015, 4.16 Solidarity noticed in advance, through a press interview for urging abolishing the draft *enforcement ordinance of Sewol Ferry Special Act*, that they will hold a memorial ceremony for the victims on April 16, 2015, in the Seoul Plaza and an event of forming human chain in front of the Blue House on April 18, 2015. Consequently, in case the demonstrators merge with the families of Sewol Ferry victims who were at the Gwanghuamun Gate, there existed a potential danger in citizens' property and personal security due to collision of about 6,000 demonstrators who were headed to the Blue House and the police force who were to deny any access to the area less than 100 meters away from the Blue House's boundary point. Even in case the demonstrators did not approach towards the Blue house and held a sit-in with the families near the Gwanghuamun Gate and the three-way intersection, there still existed a potential danger of severe damage in citizens' personal security or property if a number of people (approximately 6,000 persons) crowd into one place at the same time, obstructing vehicular traffic and disabling maintenance of order in the environs.
- d) As set forth in b), the demonstrators ignored the police line and all of the police warning regarding maintenance or order, and the number of the addressees amounted to about 6,000, so that police officers did not have any other measure to prevent any damage such as that of c) other than to restrain the march using police force or a wall of police. The police established a wall using police buses, as well as safe fences using police force, to restrain the march of the demonstrators, avoiding any direct collision of police force and the demonstrators. When establishing the wall of police, the police established it in order, the path of marching being considered, only after the demonstrators approached towards the Sejong-daero and ignored the warnings. The police also secured so-called 'vents' to enable citizens other than the demonstrators to pass through. In addition, the police established the wall in parrel from east to west to enable traffic operation in that direction. After that, the police dismantled the police wall in order without delay in accordance with time and place of termination of the illegal acts after the demonstrators approached to the northern extremity of the Gwanghuamun Plaza. The circumstances as set forth herein being considered, the police' establishing of the wall of police corresponds to a legitimate measure to restrain the march of the demonstrators.
- e) Meanwhile, it is true that there were a wall of police at the time of the offence in the ruling, yet they were established only within the roadways in direction from the Sejong Center of the Performing Arts towards the U.S. Embassy and the pass of the demonstrators were being restricted though safe fences and police force within the pavements in vicinity of the Statue of the King Sejong the Great and the place where the offence in the ruling occurred.

Measures to Guarantee Legitimate Activities of Defenders of human rights

14. The Government fully respects freedom of legitimate activities of human rights defenders, and protects them from any unlawful interference in exercising their rights. The Government fulfills its duty to enable human rights defenders to exercise legitimate activities in a safe and favorable environment without any fear of intimidation or threatening by deploying security police to prevent any activities intimidating freedom of assembly including collisions with demonstrators of opposite side or terrorism whenever advocates of human rights participate in assemblies and demonstrations, and by strictly punishing those who intimidate or threaten advocates of human rights in accordance with *Criminal Act* of the Republic of Korea.
15. The Republic of Korea provides information the Special Rapporteur requested as set forth herein. The cases regarding these persons are currently under trial, and during the trials, issues including lawfulness of the assembly itself, legitimacy of the acts by the leaders of the demonstrations, dispersion order, use of a water cannon, and arrest are being addressed. In addition, as those currently under detention were detained after the review by a court in accordance with the relevant acts, whether to release them shall also be decided by a court. The courts of the Republic of Korea are guaranteed independence of the judicial branch and no one can exercise influence on trials for any reason. The Government of the Republic of Korea calls upon the mandate holders of the Special Procedure to judge impartially and objectively regarding the provided information. /End/