



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

Geneva, 10 April 2014

Dear Mr./Ms. Special Rapporteurs,

It is my pleasure to convey the enclosed response of the Government of the Republic of Korea to the 6 questions which were raised in your joint letter dated 14 January 2014 concerning the strike of the Korean Railway Worker's Union.

I hope that the attached response will help provide a clear understanding of the situation. If needed, we are ready to provide further information or clarification.

Please accept, Mr./Ms. Special Rapporteurs, the assurances of my highest consideration.

Enclosure : as stated.

A handwritten signature in black ink, appearing to read '최석영' (Choi Seok-young).

CHOI, Seok-young
Ambassador, Permanent Representative

Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression

Mr. Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders

Palais des Nations
CH-1211 Geneva 10, Switzerland

**Response to the Joint Allegation Letter by the UN Special Rapporteurs on
Freedom of Opinion and Expression; Freedom of Peaceful Assembly and
Association; and the Situation of Human Rights Defenders**

1. With regard to the case inquired on 14 January 2014 in the joint allegation letter by the UN Special Rapporteur on Freedom of Opinion and Expression, Special Rapporteur on Freedom of Peaceful Assembly and Association, and Special Rapporteur on the Situation of Human Rights Defenders, the Government of the Republic of Korea submits its response as follows.

Summary of the Case

2. In the letter, the Special Rapporteurs requested the Government of the Republic of Korea's response to the allegations that even though the Railway Workers' Union strike, which began on 9 December 2013, abided by the proper procedures such as maintaining the level of minimum services according to the relevant domestic law, the Government regarded the strike as illegal; and that on 22 December 2013, the Government deployed thousands of police officers to the office of the Korean Confederation of Trade Unions, in which the leadership of the Railway Workers' Union was allegedly hiding, and had them enter the building without a search warrant, thereby violating Articles 19, 21, and 22 of the *International Covenant on Civil and Political Rights*(ICCPR) and the *UN Declaration on Human Rights Defenders*.

Facts Related to the Case

3. The allegation submitted to the Special Rapporteurs is in general consistent with the facts. However, there is a need to further explore the main purpose and the course of the strike.

4. The recent Railway Workers' Union strike began as an opposition to the policy of the *Railroad Industry Development Plan*, which seeks to convert the Railroad Corporation into a holding company and gradually transfer the operations of the Suseo KTX, logistics, vehicle maintenance, facility maintenance and repair, etc. to subsidiary companies. The objective of the plan is to make the overall railroad management more efficient and to increase the customers' benefits by introducing a system of competition in the railroad industry. Opposing the policy plan, the Union held large-scale rallies in July, August, and October. Although labor and management held a total of seven wage negotiations from 14 October to 6 November, no agreement was reached. On 12 November, the union requested mediation of the National Labor Relations Commission, and on 22 November, the union decided to go on strike after a vote. The subsequent negotiations between labor and management ended without progress, and the Railway Workers' Union went on strike on 9 December in opposition to the establishment of the Suseo KTX.

5. The Railway Worker's Union strike is against the government policy to make the railroad industry more advanced, and, as such, is illegal according to the domestic

laws on labor dispute. According to Article 2 of the *Trade Union and Labor Relations Adjustment Act*, labor dispute is defined as “any controversy arising from disagreements between a trade union and an employer with respect to the determination of terms and conditions of employment such as wages, working hours, welfare, dismissal, and other treatments,” and the Supreme Court maintains the decision regarding this provision that strikes against business restructuring of a company, including the merger or abolition of organizations, are illegal even if the restructuring affects the workers’ status or working conditions because the strike lacks legitimacy in aims (Supreme Court Decision, 99Do5380, Decided on 26 February 2002; Supreme Court Decision, 2002Do5577, Decided on 25 May 2006, etc.). Therefore, the Railway Workers’ Union strike is illegal, regardless of the union’s maintenance of minimum service, because its aim lacks legitimacy.

Cases of Petition or Complaint by the affected persons, and Results of Investigation and Examination

6. No case of petition or complaint has been officially reported to the government directly claiming human rights violation during the process of the police making their way into the office of the *Korean Confederation of Trade Unions*, which is the incidence pointed out by the Special Rapporteurs. However, it was reported to the media that a complaint was filed to the National Human Rights Commission claiming that the employer’s removal of some railway workers from their positions in response to the strike constitutes a human rights violation; and a state compensation claim is reported to have been brought for the State’s illegal acts during the course of the police’s execution of the arrest warrant against the Union members. Meanwhile, 10 members of the National Assembly and civil society organizations jointly established the ‘Human Rights Violations Investigation Team on Railway Workers’ Union Strike’ on 10 February 2014 and it has been investigating for one month.

7. In addition, the allegations that the disciplinary actions against the workers during the period that led up to the Railway Workers’ Union strike were unjust, as well as the employer’s compensation claim for the strike and the complaint of interference with business, are currently under investigation. Other civil law procedures are also under way, and thus there is no result to be presented to the Special Rapporteurs yet.

Measures to Guarantee the Rights to Freedom of Expression, Freedom of Peaceful Assembly and Association, etc.

8. As explained to the Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur on the Situation of Human Rights Defenders during their visit to the Republic of Korea in 2010 and 2013 respectively, its Constitution and relevant laws adequately ensure the freedom of opinion and expression and freedom of peaceful assembly and association. The particulars on the laws and policies in the Republic of Korea on these matters have already been provided to the two Special Rapporteurs during their visits.

9. Everyone is entitled to join a trade union, and free activities of trade unions are ensured as provided by the rights to freedom of expression and to peaceful assembly and association in the International Human Rights Covenants. The Constitution of the Republic of Korea also explicitly provides for workers' fundamental labor rights—the right of organization, the right of collective bargaining, and the right of collective action—and any restrictions on such rights are made only in accordance with the proportionality principle based on statutes.

10. Organization of trade unions and labor dispute are specifically regulated based on the *Trade Union and Labor Relations Adjustment Act*, by which the legitimacy of a strike cannot be recognized if the strike is carried out with a purpose other than the improvement of working conditions. The Constitutional Court decided on 29 April 2010 that the application of the crime of interference with business to an illegal strike devoid of legitimacy in its purpose, procedure, agency, and method was constitutional (Constitutional Court Decision 2009HunBa168). In light of such decision, the Government does not allow unlawful strike devoid of legitimacy. However, considering that the right of collective action is the essential right among the fundamental labor rights, greatest prudence is given in determining the illegality of strikes.

Measures to Guarantee the Activities by the Defenders of Labor Rights and other Human Rights

11. The legal system and conditions for the guarantee of just and peaceful activities of human rights defenders in the Republic of Korea were also explained in detail during the visit by the Special Rapporteur on the Situation of Human Rights Defenders in 2013. The Government of the Republic of Korea upholds the principle to guarantee peaceful activities of the human rights defenders to the highest degree, but limits violent and illegal activities to the necessary degree in accordance with law.

Legal Grounds for the Arrest and Imprisonment of Union Members, Whether They Conform with the International Human Rights Standards and the Prisoners' Rights

12. The Government defined the Railway Workers' Union strike as illegal. The arrest warrants for the 10 leaders of the union were issued on 17 December, and the police attempted to execute the warrants on 22 December. The arrest warrants were requested in compliance with Article 200-2 of the *Criminal Procedure Act*, which were then issued by the court. The suspects shall be released if detention warrants are not requested within 48 hours after their arrest. Following this procedure, the Prosecutors' office requested detention warrant and prosecuted the five union members whose criminal allegations are evident after investigation. The judge shall hold hearing to examine the suspect when the detention warrant is requested and moreover, the detained person may request the review of legality of detention for the court's review, after the detention warrant is issued (Article 214-2 of *Criminal Procedure Act*). When the suspect is detained and prosecuted, he can also request bail (Article 94 of *Criminal Procedure Act*). The arrested union members, including the

chairman of the Railway Workers' Union, were allowed bail, and currently no member of the Railway Workers' Union is in custody.

13. The criminal procedures of the Republic of Korea are in conformity with Article 9 of the ICCPR, subject to the review of an independent judiciary that has authority over all arrests and imprisonments.

14. Moreover, the provision of the crime of interference with business (Article 314 of *Criminal Act*), which was applied to the union members, applies to a person who interferes with business of another by the threat of force. The said provision is applied strictly according to the Supreme Court's decision that the crime of interference with business, as regards labor strikes, applies only to cases in which the strike was done at a time unexpected by the employer, and thereby limited the employer's free will on the continuance of the business by incurring great loss to the employer (Supreme Court Decision, 2007Do482, Decided on 17 March 2011). The Supreme Court will decide whether or not the crime of interference with business is applicable to the Railway Workers' Union strike.

15. Although no member of the Railway Workers' Union is currently in custody, if they become subject to trial under custody as unconvicted prisoners, they will receive aid from a defense counsel according to the Constitution and the *Criminal Procedure Act*. If they are unable to appoint a defense counsel, they will receive aid from a defense counsel appointed ex-officio by the court (Article 33 of *Criminal Procedure Act*). Furthermore, Article 34 of the *Criminal Procedure Act* reads, "[T]he defense counsel or a person who desires to be a defense counsel may have an interview with the accused or the suspect who is placed under physical restraint, deliver or receive any documents or things and have any doctor examine and treat the accused or the suspect," and thereby provides for the lawyer's right to interview the accused or the suspect and provide medical treatment. Similarly, the *Administration and Treatment of Correctional Institution Inmates Act*, in conformity with the international human rights law and the international criminal justice standards, stipulates that the unconvicted prisoners shall have the right to visitations, right to interview, and the right to medical treatment, etc.

16. The Government provides, as stated above, the information requested by the Special Rapporteurs. The official legal proceedings for most of the cases related to the Railway Workers' Union strike are still under investigation for prosecution. If any criminal sentence is finalized through the criminal procedures, the convicts shall be punished accordingly. If, instead, the State is found responsible for illegal acts, there will be corresponding national compensation and criminal compensation. The Government of the Republic of Korea wishes that the Special Rapporteurs will take into account all the information in a fair manner and make an objective judgment.