



PERMANENT MISSION OF THE REPUBLIC OF KOREA  
GENEVA

KGV/220 /2013

Reference: Communication From Special Procedures Joint Allegation Letter AL G/SO  
214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) KOR 2/2013

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 3 July 2013, has the honor to submit, as attached, the Republic of Korea's response to the letter of the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers.

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.

Encl.: as stated

Geneva, 15 November 2013



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18 NOV 2013

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**Response to the Joint Allegation Letter by the UN Special  
Rapporteurs on freedom of expression, human rights defenders,  
and the independence of judges and lawyers**

Ref. No. AL G/SO214(67-17), G/SO 214(107-9), G/SO 214(3-3-16) KOR 2/2013

1. The government of the Republic of Korea hereby submits its response as to the request made in the joint allegation letter dated 3 July 2013 by the UN Special Rapporteurs on the freedom of expression, human rights defenders, and the independence of judges and lawyers.

**Summary of the Allegation**

2. The allegation letter by the Special Rapporteurs concerns the defamation suit filed against the lawyers from the 'Lawyers for A Democratic Society(MINBYUN),' *Kyung-wook Chang*, *Yong-min Kim*, and *Seung-bong Yang*, by the officers of the National Intelligence Service (NIS). The officers demanded payment of 600 million won in damages, claiming that these lawyers, as counsels in the espionage case involving a public official of the Seoul Metropolitan Government, harmed their reputation as public officers by making allegations at a press conference that the charge against the defendant is based solely on the statement made by his younger sister and that this statement was forced by means of confinement, violence, threat, and placation by the NIS officers. Since the law suit was initiated by individuals based on their will, the lawsuit is irrelevant to the Government. However, the Government of the Republic of Korea hereby sincerely responds to the inquiries raised by the Special Rapporteurs, as the lawsuit is related to the investigation and the trial of the case that the petitioners defend

**Facts of the case**

3. On 22 August 2013, the first instance court for the case, on which the petitioners appeared as the counsels for the defendant, acquitted the defendant of the relevant charge including the charge under the *National Security Act* and recognized the following.

- In the relevant criminal case, the statement made by the defendant's sister was merely compelling evidence, not sole evidence. There were other corroborating evidence including the statement of other defectors, the list of defectors confiscated from the defendant, the defendant's mobile phone records, etc.
- Although it is true that the sister was confined at the Joint Interrogation Center for 6 months, the confinement was for the identification of North Korean defectors and followed legal procedure. The Court recognized "the fact that the statement was made freely without any violence, threat, cruel treatment, brainwashing, or placation by the investigators" and held that she "cannot be seen as having been investigated under illegal confinement."
- Holding the sister at the Joint Interrogation Center was a temporary protective measure. Although contact with the outside is limited to a certain extent during the confinement, it is not completely prohibited. As for the meeting with a legal counsel, the sister did not wish to contact the defense attorney of her brother's trial, and the first instance court held that "it is recognized that the sister did not exercise her right to counsel and right to interview and communication."
- With regard to the claim that the statement made by the sister was altered as a result of interrogation under duress by the NIS, the Court recognized that "though it is true that she changed the statement she made at the investigation agency, the statement was changed voluntarily, free and unburdened by pressure".

The case is currently at the Seoul High Court after the first instance judgment.

#### **Petition filed by the defense counsels and investigation in progress**

4. By the time the petition was filed to the UN Special Rapporteurs, the first instance trial of the case of Mr Yoo, a Seoul public official represented by the petitioners, was in progress. No separate investigation was conducted by the government with regard to the allegation that the human rights of the petitioners were violated. In addition, since the claims made by the petitioners concern an on-going trial, commencement of any investigation by the executive

may result in the infringement of the trial party's right to fair trial and independence of the judiciary.

5. In fact, when the counsels held a public press conference, the Court asked them to refrain from it. The judge pointed out that "the press conference recently held by the counsels for the defendant was inappropriate because it could affect the result of the trial unfairly," and warned that the Court will take necessary actions if they continue such actions.

6. The defendant of the case defended by the petitioners was acquitted of the charge related to the *National Security Act*, and this decision proves that the petitioners' right to provide legal counsel was not restricted.

#### **The relationship between defamation and restriction of the right to provide legal counsel**

7. As explained to the UN Special Rapporteur on freedom of expression in 2010 and to the UN Special Rapporteur on human rights defenders in 2013 at their respective visits to Korea, Korea's criminal law stipulates the crime of defamation and defines the circumstances precluding wrongfulness at the same time, stipulating that even if the matter in question harms the reputation of another person, it is not punishable if the facts alleged are "true and solely for the public interest." Moreover, by stipulating that "an act which is conducted in accordance with Acts and subordinate statutes, or in pursuance of accepted business practices, or other action which does not violate the social rules shall not be punishable" (Article 20 of the *Criminal Act*), the law prevents lawyers from being punished for the statements made in court, even if it defames another person.

8. The Supreme Court declared that "defamation by media reports mainly regarding the policy making or business practices of the government or a national organization of a public officer who is involved in such policy making or business practice may constitute a crime when it is considered to be a significantly unfair, malicious, or excessively indiscreet personal attack on the public officer." The Court also explains that "a case related to the public interest for an official body should be reviewed in a different perspective from a case in a private area; a case may be differentiated by considering whether the case refers to public concerns

or to merely private affairs, and whether it contributes to the formation of public opinion or open debates as a public or social issue to be widely informed.” (The Supreme Court Decision on December 27, 2007. 2007Da29379) Thereby, The Supreme Court has been judging the crime of defamation or any compensation for the crime through various criteria.

9. Therefore, it is supposed that the Court would review the defamation suit filed by NIS officers according to the established jurisprudence of the previous judgments.

10. Meanwhile, if the petitioners claim that the defamation suit filed by NIS officers violated their right to provide legal counsel, they may make the claim in the procedure of this defamation suit; in addition, the petitioner may also file a separate lawsuit to sue for national compensation or a separate compensation law suit against the Government claiming that the NIS officers were abusing their rights by purposefully filing the defamation suit to restrict the petitioners’ right to provide legal counsel.

#### **Guarantee for the actions of human rights defenders**

11. The Government of the Republic of Korea respectfully asks to refer to the information provided in detail to the Special Rapporteurs upon their visit in 2013 on the legal system and its current status that aim to guarantee lawful and peaceful action of the human right defenders in the Republic of Korea. /