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Reference: Joint Communication from Special Procedures (AL KOR 3/2016)

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, with reference to the latter's note verbale dated 26 July 2016, has the honour to submit, as attached, the Republic of Korea's response to the joint communication from special procedures. The Permanent Mission has further the honour to request that this response remain confidential as the criminal case concerned is currently pending in the court.

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 assurances of its highest consideration.

Encl.: as stated

Geneva, 28 October 2016

Special Procedures Branch (c/o Natacha Foucard)  
Office of the High Commissioner for Human Rights (OHCHR)  
Palais des Nations  
1211 Geneva 10



**Response of the Republic of Korea on the Joint Communication from the Special Rapporteur on the Freedom of Expression, the Special Rapporteur on Peaceful Assembly, and the Special Rapporteur on Human Rights Defenders**

1. With regard to the joint communication sent to the Government of the Republic of Korea 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 on 26 July 2016, the Government of the Republic of Korea submits its response as follows.

*Additional Information and Comments Regarding the Allegations*

2. Contrary to the allegations, Mr. Sang-gyun Han was not punished simply for organizing numerous demonstrations from April to November 2015. He was prosecuted for a number of offences committed during a total of 11 violent assemblies from April to November 2015, which include one count of inflicting bodily injury by special obstruction of public duty, three counts of special obstruction of public duty, two counts of special obstruction of public goods, seven counts of general obstruction of traffic, five counts of in compliance to order to disperse, and four counts of participation in assemblies conducted in prohibited places. In particular, as Mr. Han assaulted police officers with other demonstrators during the May 2015 assembly, the police deemed an investigation of the alleged crime necessary and requested his appearance but he did not appear. Pursuant to the *Criminal Procedure Act*, which stipulates that an arrest warrant may be issued in the event of non-compliance to the request of appearance by an investigative agency,<sup>1</sup> the court issued an arrest warrant against Mr. Han after examining whether the warrant had a justifiable reason.
3. Nevertheless, Mr. Han hid in the *Jogye* Temple even after the arrest warrant was issued and further organized a number of illegal violent assemblies such as the assembly held on 14 November 2015. He took refuge in the religious facility in order to intentionally avoid criminal punishment for the offences such as assault against police officers and destruction

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<sup>1</sup> **Criminal Procedure Act**, Article 200-2 (Arrest with Warrant)

(1) Where a probable reason exists to suspect that a criminal suspect has committed a crime, and he/she refuses or is likely to refuse to request of appearance under Article 200 without good cause, a prosecutor may arrest the criminal suspect with an arrest warrant issued by a judge of the competent district court upon request of the prosecutor, and a senior judicial police officer may arrest the criminal suspect with an arrest warrant issued by a judge of the competent district court upon request of the prosecutor who is requested for the warrant by the judicial police officers: Provided, that with regard to cases punishable with a fine of a maximum amount not exceeding 500,000 won, misdemeanor imprisonment, or a minor fine, such arrest shall be effected only where the criminal suspect has no fixed dwelling or refuses the request of appearance under Article 200 without good cause.

of public goods, so the allegation that he hid out of fear of detention for exercising the right to peaceful assembly is false.

*Conformity of the Prosecution and the Sentence with International Human Rights Norms*

4. As described in the factual information above, Mr. Han was prosecuted for a number of charges including “special obstruction of public duty.” In particular, Mr. Han, along with other demonstrators, assaulted police officers who were maintaining public order during the assembly held in May 2015. During the assembly on 14 November 2015, he also damaged police buses and distributed numerous ladders and ropes that were prepared for confrontation with the police. The participants of the assembly used ladders, ropes, iron pipes, bars, etc., to collectively assault, damage, and set fire to police buses and police officers. Consequently, the violent nature of the assembly was so severe as to pose a threat to the lives of police officers as well as rest of the participants of the assembly.
5. As such, the prosecution against Mr. Han was not simply “organizing illegal assembly” but included “special obstruction of public duty,” “special obstruction of public goods,” “general obstruction of traffic,” and violations of the *Assembly and Demonstration Act*. Mr. Han was found guilty based on evidence verifying the criminal charges, and a first instance court comprised of three judges sentenced him to five years of imprisonment on 4 July 2016.
6. The reasons for this sentence are elaborated in the written judgment as follows: Mr. Han’s criminal behavior can be subject to 3~16 years and 6 months of imprisonment according to the statutory sentencing and the regulations for sentencing of numerous crimes; Mr. Han deserved strict punishment for his criminal behavior including preparing various tools for and inciting of violent assembly and delivering his will through violence even though he had already received three years of imprisonment for “special obstruction of public duty.”: The judges further explained that they took into account various circumstances such as the details of crime, situation after the crime, and also the fact that some of Mr. Han’s criminal behaviors were conducted during period of recidivism.
7. International human rights norms do not stipulate a specific type of punishment for a particular crime but provide for the right to fair and impartial trial, which is based on the shared understanding that a prosecution and sentencing for a crime are matters exclusively under the domestic jurisdiction of States. However, the allegation assumes that Mr. Han was

arrested, prosecuted, and sentenced for exercising his right to freedom of peaceful assembly as guaranteed by the international human rights norms, which is factually inaccurate as explained above. No violent assembly shall enjoy protection according to international human rights norms and proportionate punishment of such violent acts is not constrained by international human rights norms. Mr. Han was arrested, prosecuted, and sentenced to five years of imprisonment for a number of crimes including the assault of police, inflicting damage on police buses, and attempted arson, where strict criminal procedures that are compatible with international human rights norms were respected. Therefore, prosecuting and sentencing of Mr. Han for his action is compatible with international human rights.

*Measures Taken to Ensure Mr. Han's Right to a Fair and Impartial Trial as Guaranteed by International Human Rights Law*

8. The right to a fair and impartial trial in the Republic of Korea is guaranteed without discrimination to each and every person, including Mr. Han. Article 27 of the *Constitution of the Republic of Korea* sets forth the right to a fair and public trial by an independent court, while Articles 105 and 106 stipulate the term of office and retirement age of judges to guarantee the independence of the judiciary. Article 109 further stipulates that “trials and decisions of the courts shall be open to the public,” thus upholding the principle of public trial. As such, according to the *Constitution* and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) that guarantees the right to a fair and impartial trial, the *Criminal Procedure Act* specifies the procedures through which the right can be guaranteed.
9. In accordance with such principles and procedures, Mr. Han received legal assistance from five counsels of his own choosing and the hearing was made public. During the process, rights stipulated in Article 14 of ICCPR such as the right to a legal counsel, the right to be presumed innocent, and the right to a public trial without delay were guaranteed.<sup>2</sup> A second instance trial in the High Court is currently underway as both Mr. Han and the prosecution appealed. Mr. Han may appeal to the Supreme Court if he finds objection against the ruling of the High Court.

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<sup>2</sup> For detailed information on the criminal procedure of the Republic of Korea and its compatibility with the International Covenant on Civil and Political Rights, in particular Article 14, refer to Paragraphs 198-214, First Periodic Report of the Republic of Korea on the International Covenant on Civil and Political Rights(CCPR/C/68/Add.12); Paragraphs 153-174, Second Periodic Report of the Republic of Korea on the International Covenant on Civil and Political Rights(CCPR/C/114/Add.1); and Paragraphs 222-234, Forth Periodic Report of the Republic of Korea on the International Covenant on Civil and Political Rights(CCPR/C/KOR/4).

*Comments in Relation to the Alleged Disproportionate Use of Force by the Authorities at the Assembly Held on 14 November 2015*

10. The assembly held on 14 November 2015 was a demonstration in which laborers, farmers, students, and the poor, who all had held separate assemblies in central Seoul, gathered and marched along a path deviating from the reported range of assemblies and occupying roads from 14:25 P.M. A total of 68,000 demonstrators gathered in *Sejong-daero*, Seoul, around 16:35 P.M., and they started to advance, refusing to comply with police orders to disperse 15 times. The assembly involved massive violent acts including collective assault against police officers with iron pipes and lumber bars and serious damage of police buses. The demonstrators eventually dispersed around 1:30 A.M. the next day. The police deployed 20,000 police officers, 19 water cannons, and 580 capsaicin sprayers, in order to effectively counter such an illegal violent assembly. The court acknowledged that a total of 108 police officers were injured, two of whom sustained severe injuries, and that 43 police buses and 138 pieces of equipment were damaged in this assembly, which turned out to be one of the most violent assemblies in recent years.
11. Considering such circumstances, it is hard for the Government to concede to the allegation that the police's response constituted a disproportionate use of force. Out of the 68,000 demonstrators, some used ladders, ropes, iron pipes, and lumber bars, which are prepared in advance, to collectively assault, damage, and attempted to arson police buses and police officers. At the time, the police had established bus barricades in order to halt the illegal marching of the demonstrators and to prevent accidental physical confrontation and violence during the course of arrest or forced dispersion. The water cannons and the portable capsaicin spray were used in order to separate the demonstrators towards the bus barricades. Police officers at the scene were not equipped with even clubs but with helmets and shields necessary for self-defense. Therefore actions by the police were merely taken in self-defense from the violence of the demonstrators rather than active and aggressive response.
12. Despite such response from the police, one farmer sustained critical injury during the demonstration and died on 25 September 2016. The police already conducted an inspection upon this matter, and a separate investigation by the prosecutors' office is underway.

*Measures to Ensure the Legitimate Work of Human Rights Defenders*

13. The Government of the Republic of Korea guarantees maximum freedom for human rights defenders to carry out their legitimate activities and protects them from any unlawful

interference in exercising their rights. Human rights defenders have the right to freedom of peaceful assembly and the right to organize and join any organizations, and are guaranteed active and free communication with the government. Human rights defenders are also guaranteed the freedom of expression as they may freely express and form opinions provided that such activities do not pose a threat to national security or infringe upon other's rights. Particularly, human rights defenders freely enjoy their freedom of expression including via the excellent internet infrastructure of the Republic of Korea. Those who intimidate or threaten human rights defenders are strictly punished according to the criminal law of the Republic of Korea, which effectively ensures that human rights defenders are able to carry out their legitimate activities in a safe and enabling environment.

#### *Measures to Ensure the Right to Peaceful Assembly and the Integrity of Those Exercising This Right*

14. The Government of the Republic of Korea fully guarantees the right to freedom of peaceful assembly and association for all within its jurisdiction pursuant to the *Constitution* of the Republic of Korea and international human rights norms. The right to freedom of assembly is specifically stipulated in the *Assembly and Demonstration Act*, which allows anyone to hold an assembly or a demonstration if the relevant details are reported to the police in advance and this rights may be restricted by law only when the assembly poses danger to public order, violates the rights of others or entails violence. Furthermore, the Act prohibits the obstruction of an assembly or a demonstration and provides for aggravated punishment in the case where a member of the armed forces, public prosecutor, or the police is involved in the interference with a peaceful assembly or demonstration. A person may request protection from the police if there is reasonable ground for fear of obstruction of an assembly or a demonstration. The police also fully guarantee the right to freedom of peaceful assembly by protecting participants of an assembly from any violence via installing police lines while also maintaining public order.
15. Should the assembly itself be an unreported assembly or pose a direct and clear threat to public order by violence of participants of assembly, the assembly may be ordered to disperse. Police officers may restrictively use police equipments according to the *Act on the Performance of Duties by Police Officers* and its regulations regarding use of police equipments. They also receive education and training on human rights so as to prevent infringement of human rights.

#### *Conclusion*

16. As explained above, the allegation in the communication is rather contrary to the fact or groundless. The Republic of Korea, as a full-fledged democratic country and a staunch supporter for human rights, has a well-established constitutional framework that protects human rights and fundamental freedoms for all to the fullest extent. The Government of the Republic of Korea expresses its gratitude for the work of Special Rapporteurs and responds as above to the communication letter. /End/