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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 has the honor to refer to the joint communication from special procedures(AL KOR 1/2017) dated 8 June 2017.

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva has further the honor to submit, as attached, the Republic of Korea's comments on the joint communication.

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, 15 August 2017



Secretariat of the Special Procedures Branch (c/o Beatriz Balbin)  
Office of the High Commissioner for Human Rights (OHCHR)  
Palais des Nations  
1211 Geneva 10, Switzerland

## **Comments by the Government of the Republic of Korea on the Joint Communication from Special Procedures on Blacklist**

On 7 February 2017, several Korean senior level officials including former Chief of Staff to the President and former Minister of Culture, Sports and Tourism (hereinafter referred to as “the Accused”) were formally accused for the charges regarding the exclusion of certain artists from the government-controlled support programs. The first-instance judgement was rendered on 27 July 2017, which is being specified in detail as follows. The judgment, however, is not final and conclusive, as the appeal court and the Supreme Court may recognize otherwise.

- *The Accused*  
Former Chief of Staff to the President, Former Senior Secretary to the President for Political Affairs and Minister of Culture, Sports and Tourism, Former Senior Secretary to the President for Education and Culture, Former Secretary to the President for Culture and Sports, Former Minister of Culture, Sports and Tourism, Former Secretary to the President for Public Communication and Vice Minister of Culture, Sports and Tourism, Former Secretary to the President for Public Communication and Secretary to the President for Political Affairs
- *Summary of the Facts Charged:*  
The Presidential Office ordered the Ministry of Culture, Sports and Tourism (hereinafter referred to as “MCST”) to either reduce or cut governmental funding and support for a set of artists and cultural organizations who were blacklisted on political grounds, such as expressing their support for the opposition candidates in elections, participating in campaigns against the government or being classified as left-leaning. Upon receiving this instruction from the Presidential Office, the MCST did not immediately respond. However, in the wake of the dismissal of the Minister and replacement of the Vice Minister by the President in July 2014, it could no longer remain inactive.

As instructed by the Presidential Office, the government officers of the MCST actually referred to the blacklist in selecting the beneficiaries of government-funded projects undertaken by the MCST and its affiliated entities, and in appointing candidates for a number of crucial positions as

well as winners of medals and citations, which constitutes wrongful acts in the performance of duties.

- *First-Instance Sentences and Reasons expressed by the Court*  
The *Culture and Arts Promotion Act* and the *Promotion of the Motion Pictures and Video Products Act* explicitly obligate the Arts Council Korea and the Korean Film Council an independent performance of duties. Even with the *Publishing Industry Promotion Act*, which does not contain such provisions, the government officers are obliged to ensure fair business practices in compliance with the guidelines.

The government funding provides the artists selected with an opportunity to produce creative work and allows the consumers to enjoy the works of those artists. To deny government funding to certain individuals or groups on political grounds is an infringement upon the freedom of expression, which is guaranteed by the Constitution and relevant laws, and is inconsistent with the spirit of the Constitution prohibiting censorship.

The following are examples of abuse of official duties committed by the accused: undue intervention in the selection of senior examiners of the Arts Council Korea; the Presidential Office's receipt and review of a list of applicants for the Arts Council Korea's funding in 2015 and 2016 and subsequent instructions to the MCST to exclude certain applicants from funding; intervention in the Korean Film Council's deliberations; and receipt of a list of applicants for the "Sejong Books" program sponsored by the Publication Industry Promotion Agency of Korea and denial of government funding to some applicants for having previously voiced their opposition to the government.

The court of first instance handed down a one- to three-year prison sentence to each of the seven defendants.

Apart from the court's deliberation on the criminal charges against the accused, the Board of Audit and Inspection of the Republic of Korea conducted a management audit from January 19 to March 10, 2017 on the programs implemented by the MCST and its affiliated organizations for the past three years. It announced the following findings with respect to the unfair denial of government support to certain artists and cultural figures and groups.

- In March 2014, the MCST, under the instruction of the Presidential Office, began to send the lists of applicants for government funding programs and candidates for examiners of its affiliated entities to the Presidential Office. The Presidential Office returned a selective list of artists with a “yes” or “no”, and the MCST, in turn, instructed its affiliated organizations to make decisions as indicated on the list.
- A total of ten organizations, including the Arts Council Korea and the Korean Film Council, unduly removed certain individuals and groups from consideration when selecting examiners or funding recipients as directed by the MCST.
- The Board of Audit and Inspection demanded that the MCST take disciplinary actions against three officers involved and issued a warning against six other officers involved. It also required not only the minister of the MCST to implement measures to prevent such actions from taking place again but also the heads of four affiliated organizations to exercise caution.

In order to prevent the recurrence of this kind of arbitrary selection, on 9 March 2017, the MCST officially announced a plan to reinforce fairness in culture and arts policies. This plan stipulates reforms in budgeting, evaluation process and organization management to restore fairness in selection process and ultimately guarantee rights and interests of artists and relevant organizations. It also stipulated that projects that were unjustly canceled or wrongly modified be resumed.

- To institutionalize transparency in all deliberative processes conducted by government-funded cultural promotion organizations such as the Arts Council Korea, the Korean Film Council and the Publication Industry Promotion Agency, the MCST introduced an evaluation system where examiners of projects are randomly chosen from a pre-existing pool of experts and the public has access to the decisions of the evaluation panel.

Furthermore, to regain public trust and to restore fairness in culture and arts policies, the MCST established a committee on 31 July to carry out a six-month investigation of the blacklist incident. The committee consists of 21 members including civilian experts in the fields of culture, arts and law. The mandates of the committee include a comprehensive investigation of the incident, identification of additional preventive measures, and publication of a white paper to put what have been identified into record for the future generation.

As for the information on complaints raised by affected artists and groups and their compensation, five lawsuits have been filed to this date: four claiming compensation for the material and psychological damage and violation of the basic rights of artists incurred by the blacklist incident; and one constitutional petition claiming that making a blacklist is against the Constitution. Compensation will be made in accordance with the court's decisions.