

Response of the Government of the Republic of Korea on the Joint Urgent Appeal from Special Procedures

1. In regards to the joint urgent appeal dated 16 August 2017 by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the Working Group on Arbitrary Detention, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, government of the Republic of Korea submits the response as follows.

Summary of the Allegation

2. The Special Procedures asked for the government of the Republic of Korea's response to the allegations of the recent cases of arrest interrogations, detentions and prosecutions of soldiers perceived to be gay, under the Republic of Korea's *Military Criminal Act*. The information received by the Special Procedures further alleged that the launch of an investigation took the form of a generalized campaign against enlisted and commissioned officers suspected of being gay; that it lacked due process, in particular regarding the context around the arrest and detention of those service men; and that the *Military Criminal Act* can be used to systematically discriminate against persons in military service, based on their actual or perceived sexual orientation.

3. In particular, Special Procedures asked the Republic of Korea to provide additional information and comments on the above-mentioned allegations; to provide information on whether appropriate legal procedures are being followed under Article 92-6 of *the Military Criminal Act* on related investigative methods, investigations, and trials; to indicate the intention to review and amend *the Military Criminal Act* by repealing the provision in Article 92-6; to indicate measures taken to protect and promote LGBT rights in the military service; to provide information on the steps taken to tackle protective custody practices ("guardhouse detention") without warrant of soldiers and military personnel.

Additional Information Related to the Case

4. Around 10 January 2017, the Army's criminal investigation authority became aware that a person presumed to be an active duty soldier recorded a video of engaging in sexual relations in a barrack with a soldier of the same sex and posted the said video on social network; after analyzing the relevant video and posts, the authority identified the suspect and initiated a criminal investigation. The investigation confirmed that some soldiers violated Article 92-6 of *the Military Criminal Act* by engaging in sexual relations with the same sex in and out of the barrack, resulting in 23 people being charged and one of them being arrested. The Army's investigative agency followed regular investigation procedures in identifying and investigating the criminal cases, which was not initiated by an order to hunt down gay soldiers.

5. The Army's investigative agency did not arrest Mr. [REDACTED] nor did it use illegal investigative techniques. The investigation began with Mr. [REDACTED] attending voluntarily upon the request of the military prosecutor. During the investigation, Mr. [REDACTED] was provided with sufficient explanation and turned over his cellular phone voluntarily. He also signed a document stating that he agreed with the voluntary submission of his cell phone. Furthermore, the investigation followed the appropriate procedures in accordance with the *Criminal Procedure Act* and the *Military Court Act*, including informing Mr. [REDACTED] of his right to remain silent and his right to legal counsel. During the course of the investigation, Mr. [REDACTED] confessed that he had violated the law.

6. It is true that the existence of the social network application was confirmed in order to verify the testimony of the suspects under investigation, as they testified to using the related social network application. However, it is an unfounded allegation that the military investigation authority used this social network application to identify and investigate gay military personnel.

7. In the case of army surgeon Mr. [REDACTED] the military police officers requested his attendance two times after he became a suspect violating Article 92-6 of the *Military Criminal Act*, but he failed to attend without a reasonable excuse. As such, the military police officer and the military prosecution requested an arrest warrant of court in accordance with the *Military Court Act*. Having received the said warrant, the investigative authority arrested Mr. [REDACTED] at a hotel in Seoul on 13 April 2017 after informing him of the issuance of the warrant, a summary of the criminal facts and his Miranda rights.

8. The military prosecutor and the military judicial police officers strictly adhere to the due process provisions set out in the *Criminal Procedure Act* and the *Military Court Act* in conducting any investigation including the investigation into the allegation of a violation of Article 92-6 of the *Military Criminal Act*.

Intention to amend the Military Criminal Act

9. The government maintains the view that Article 92-6 of the *Military Criminal Act* does not intend to impose criminal punishment by reason of one's sexual orientation, but upholds military order and discipline, taking into account the nature of communal living in barracks. Nonetheless, an amendment bill to abolish the provision has been submitted to the National Assembly, so the Ministry of National Defense is considering the necessity of the amendment.

Measures to Protect the Rights of LGBTs in Military Service

10. The rights of the homosexuals within the military are protected by a separate regulation. The regulation stipulates prohibition of discrimination based on sexual

orientation; prohibition of any acts to identify homosexuals through questionnaires and the like; and confidentiality of personal secrets so that even when one's sexual orientation is revealed, such fact or record thereof will not be disclosed.

11. Furthermore, commanders conduct interviews to hear the difficulties faced by soldiers with homosexual orientation and respond in an appropriate manner. Also, human rights education is continuously conducted for soldiers, which includes a course on protecting the rights of sexual minorities.

Steps to Tackle the Practice of Guardhouse Detention

12. The *Military Personnel Management Act* sets forth a guardhouse detention system as a disciplinary measure for military discipline and maintenance of order. In order to prevent the arbitrary enforcement of the guardhouse detention system, a review by a disciplinary committee must be conducted in advance, the subject's right to testify is ensured, an military judicial officer with attorney qualifications conducts an additional legality review after the disciplinary committee makes its decision, and there is an appeal system where another review can be requested if one wishes to appeal the disposition of guardhouse detention. Currently, the guardhouse detention system is based upon the law and is being operated by lawful procedures.

13. Despite the above, in consideration of the opinion that the guardhouse detention system infringes upon the right to liberty protected by the Constitution, the Ministry of National Defense has agreed to an amendment bill of the *Military Personnel Management Act* that was tabled by an assemblyman on 15 March 2017 to abolish the guardhouse detention system. The said bill is currently under review by the Legislation and Judiciary Committee of the National Assembly. The Ministry of National Defense is making efforts to ensure an expedited passage of this bill. The End.



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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 Urgent Appeal from Special Procedures(UA KOR 2/2017) dated 16 August 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 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, 2 February 2018

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