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The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and, with reference to the Joint Communication From Special Procedures No. AL KOR 3/2017 dated 22 November 2017, has the honor to forward the response from the Government of the Republic of Korea to the abovementioned joint communication, as attached.

The Permanent Mission of the Republic of Korea kindly requests the understanding of OHCHR that due to technical reasons, the attached response was not delivered as intended in February 2018.

The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 5 October 2018

Office of the United Nations High Commissioner for Human Rights

Palais des Nations, CH-1211 Geneva 10, Switzerland



The Government of the Republic of Korea's Response to the Joint Communication by the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

1. The Government of the Republic of Korea hereby submits its response to the joint communication of the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereinafter, "the Special Rapporteur on the right to health"), in connection with detention, prosecution, and health condition of Ms. Park Geun-hye (hereinafter, "Ms. Park"), the former President of the Republic of Korea.

Summary of the Event

2. The Working Group on Arbitrary Detention and the Special Rapporteur on the right to health stated that they had received the following information:

(a) Ms. Park was arrested on 30 March 2017, remained in police custody for more than two weeks thereafter, and was formally prosecuted on 17 April 2017. On 13 October 2017, the court extended her detention citing concerns that Ms. Park would not attend trial and that she could tamper with or destroy evidence. Since her arrest and detention, Ms. Park made repeated requests for bail, provisional release or house arrest, which have been denied by the court. Ms. Park suffers from gastric ulcer, knee osteoarthritis, Addison's disease and back pain, but has not received adequate healthcare. Her condition seems to have been aggravated during her detention, as Ms. Park has been required to attend a court hearing four days a week for ten hours a day. Ms. Park fainted on 30 June 2017 because of stress and fatigue.

(b) The Government of the Republic of Korea employed intimidating and abusive interrogation techniques toward Ms. Park including prolonged interrogation and sleep

deprivation in order to elicit confession and self-incriminating evidence. The Government threatened and coerced those who were prosecuted in separate cases to provide information or statements that are unfavourable to Ms. Park.

3. The Working Group on Arbitrary Detention and the Special Rapporteur on the right to health requested the Government of the Republic of Korea to provide information including its comment on these allegations, the reasons for the continued detention of Ms. Park, the measures taken to accommodate her specific medical condition and to protect Ms. Park's right to fair trial.

Factual Background

4. The Government wishes to correct the factual errors of the allegations submitted to the Working Group on Arbitrary Detention and the Special Rapporteur on the right to health.

On the allegation that Ms. Park was in police custody for more than two weeks and was formally prosecuted subsequently

5. On 27 March 2017, the Seoul Central District Prosecutors' Office formally requested the Seoul Central District Court for a detention warrant for Ms. Park on 13 charges including a violation of the *Aggravated Punishment of Specific Crimes Act* (bribery), which is punishable by life imprisonment or imprisonment of not less than 10 years. On 30 March 2017, a judge in charge of issuing detention warrants at the Seoul Central District Court conducted an eight-hour review on the legality of the detention with the presence of Ms. Park and her attorneys and issued the warrant on 31 March 2017 approximately at 3 a.m., concluding that he "recognizes the need, necessity and reasonableness of the arrest as a *prima facie* case for the primary charges against the suspect has been established and there is a concern that the suspect may attempt to destroy evidence."¹ The whole procedure which encompasses Ms.

¹ The *Criminal Procedure Act* of the Republic of Korea stipulates that when a probable reason exists to suspect that a criminal suspect has committed a crime and if he/she falls under any of the grounds for detention (when he/she has no fixed dwelling; when there are reasonable grounds to suspect that he/she may destroy evidence; when he/she flees or there are reasonable grounds to suspect that he/she may flee) a

Park's attendance at the court for the review of the legality of the detention warrant, leading to Ms. Park's detention at the Seoul Detention Center, has been covered by major media and foreign press, the contents of which are accessible by the public through the Internet.² Ms. Park was subsequently prosecuted on 17 April 2017, the date which falls within the legitimate detention period under the relevant law.³ After all, because Ms. Park has been admitted to the Seoul Detention Center in accordance with the law and due process, her detention does not meet the definition of arbitrary arrest or detention that is prohibited under Article 9 of the International Covenant on Civil and Political Rights. Accordingly, the allegation that "Ms. Park was charged after she had been in police custody for more than two weeks", which implies that her detention was arbitrary, is factually false.

On the allegation that Ms. Park was put on a court hearing four days a week for 10 hours a day

6. Throughout the first trial that is being conducted from May 2017 to this day, January 2018, after Ms. Park was formally prosecuted, there were a total of 10 times Ms. Park was on a court hearing for four days a week,⁴ of which only three took 10 hours.⁵ Therefore, it is a distortion of facts to allege that Ms. Park's aggravated health condition is attributable to the

prosecutor may detain the criminal suspect with a detention warrant issued by a judge of the competent district court upon request by the prosecutor. (See Articles 70 and 201)

² Taehoon Lee, "Arrest warrant sought for ousted South Korean President Park Geun-hye", CNN, 2017. 3. 27., <http://edition.cnn.com/2017/03/27/asia/south-korea-park-geun-hye/index.html>;

Taehoon Lee and Joshua Berlinger, "Ousted South Korean President Park Geun-hye arrested", CNN, 2017. 3. 31., <http://edition.cnn.com/2017/03/30/asia/south-korea-ousted-president-park/index.html>.

³ Under the *Criminal Procedure Act*, **Article 203 (Detention Period by Prosecutor)** stipulates, "[i]f a prosecutor detains a criminal suspect or receives a suspect from a senior judicial police officer, the suspect shall be released if a public prosecution is not instituted within 10 days";

Article 205 (Extension of Detention Period) stipulates, "[w]here it is deemed that there is a good reason to continue the investigation, a judge of a district court may extend the period prescribed in Article 203, upon request of a prosecutor, and only one such extension shall be granted to the extent not exceeding 10 days."

⁴ Three accounts in June, four in July, one in August, and two in September.

⁵ The date on which a trial took 10 hours was as follows: 29 May, 10 August, 26 September 2017.

procedure by which she was required to attend four days a week, 10 hours a day.

On the alleged human rights abuses during investigation

7. Ms. Park was investigated only once by the prosecution, which took place on 21 March 2017, lasting for approximately 14 hours from 9:35 to 23:40. After the investigation, Ms. Park and her attorneys examined the suspect interrogation report that documented her statements made during the interrogation, and made her way home seven hours thereafter, at 6:55 on 22 March 2017. In sum, the interrogation accounted for 14 hours out of a total of 21 hours of the prosecution's investigation, and seven hours were taken by Ms. Park on a voluntary basis to examine the suspect interrogation report on her own. For this reason, the allegation that Ms. Park was subjected to prolonged interrogation and sleep deprivation by the investigative authority in order to elicit a confession and self-incriminating evidence is not true.

Response to the Inquiries

8. The Government of the Republic of Korea hereby submits its response to the inquiries made in the joint communication by the Working Group on Arbitrary Detention and the Special Rapporteur on the right to health, in connection with Ms. Park's detention, health condition, and rights to fair trial and counsel.

Grounds for extension of Ms. Park's detention period

9. In principle, the validity of detention is restricted to the fact of an offence written on a detention warrant. Accordingly, it is the established precedent of the Supreme Court of the Republic of Korea that issuing an additional detention warrant for the fact of an offense not included in the initial detention warrant, thereby extending the detention period for the

accused who is already in detention by the initial warrant, is not a violation of law.⁶ Therefore, the court may issue an additional detention warrant on a charge other than those encompassed in the initial detention warrant as long as such charge meets the requirements for a valid detention warrant.

10. Ms. Park was admitted to the Seoul Detention Center on 31 March 2017 in accordance with the detention warrant which the Seoul Central District Court issued upon the request of the Seoul Central District Prosecutor's Office and prosecuted while in detention on 17 April 2017. On 26 September 2017, which falls within six months of detention period allowed by the first detention warrant,⁷ the Seoul Central District Prosecutor's Office requested the competent court of the Seoul Central District Court to issue an additional detention warrant for Ms. Park on a separate charge of violation of the *Aggravated Punishment of Specific Crimes Act* that was not included in the initial detention warrant issued on 30 March 2017 but later found during the stages of the prosecution. Subsequently, the court issued the additional detention warrant on 13 October 2017.

11. Under the *Criminal Procedure Act* of the Republic of Korea, the prosecution may request the court to issue a detention warrant when a probable cause exists to suspect that the accused has committed a crime and falls under any of the following, which are, when he/she has no fixed dwelling, when there are reasonable grounds to suspect that he/she may destroy evidence, or when he/she flees or there are reasonable grounds to suspect that he/she may flee.⁸ Also, in evaluating the grounds for detention, the Act stipulates that every court shall take into consideration the seriousness of the crime, risk of repetition of the crime, anticipated harm to the victim or important witnesses.⁹

12. When the additional detention warrant was issued on 13 October 2017, most of the

⁶ Supreme Court of the Republic of Korea, 10 November 2000, 2000Mo134 Judgement

⁷ Under the *Criminal Procedure Act*, **Article 92** stipulates: "(1) The period of detention shall be two months. (2) Notwithstanding paragraph (1), the period of detention may be renewed by a court ruling only twice by two months each time for each grade, if particularly necessary to continue detention. Provided that it may be renewed three times or less if it is unavoidable and necessary for an appellate court to hold an additional hearing, upon request of a criminal defendant or a defence counsel for the examination on the evidence, or submission of a written statement to supplement the cause of appeal, or for any other reason."

⁸ **Article 70(1) and 201(1)** of the *Criminal Procedure Act*.

⁹ **Article 70(2)** of the *Criminal Procedure Act*.

accomplices of Ms. Park had been found guilty, leading to anticipation that Ms. Park would face a heavy sentence. Also, Ms. Park was on trial for a separate charge of violation of the *Aggravated Punishment for Specific Crimes Act* (bribery) that was not included in the initial detention warrant issued for 13 criminal charges but later additionally charged by the prosecution, which constitutes serious criminal offences punishable by life imprisonment or imprisonment of not less than 10 years.

13. Furthermore, contrary to the promise she had made to the Korean public in the wake of the corruption scandal while she was still in office, Ms. Park did not comply with the summons by the prosecution and special prosecution, and did not appear before the court for her impeachment trial. Moreover, not only were Ms. Park absent three times at her own hearing without valid excuse, but she also did not appear before the court in trials of her accomplices in which she was summoned as a witness. Consequently, there would have been a low likelihood of Ms. Park's appearance at the court and cooperation throughout the trial proceedings if she had been put on trial without detention.

14. In addition, considering the fact that major witnesses in Ms. Park's trial were her subordinates, it was highly likely for Ms. Park to attempt to win over witnesses or fabricate evidence if she were to be put on trial without detention.

15. Taking these circumstances into consideration, the court issued the additional detention warrant extending the period of detention in observance of the law and due process.

On whether continued detention of Ms. Park complies with the international standards on fair trials

16. Since her arrest on 31 March 2017, without undue delay, Ms. Park has been receiving a fair public trial based on the principle of presumption of innocence, and she has been guaranteed sufficient time with legal counsel and convenience needed to prepare for her trial as explained below.

17. Also, as stated above, Ms. Park did not appear before court three times without valid excuses, leading the court to reasonably conclude that it is very unlikely for her to attend a trial if she were not detained. As Ms. Park has never filed a motion for release on bail, she is

now standing trial in detention.

18. Furthermore, since her arrest, Ms. Park has been detained in a single cell in the form of individual accommodation that is 10.08 square meters in size, separated from other convicted prisoners.

19. Consequently, it is evident that the extension of Ms. Park's detention complies with Article 9 of the International Covenant on Civil and Political Rights and that the treatment of Ms. Park and the measures taken by the Government to guarantee her right to a fair trial comply with Articles 10 and 14 of the Covenant.

Grounds for rejection of Ms. Park's motion for release on bail and house arrest

20. The *Criminal Procedure Act* stipulates two types of bail.¹⁰ The first is the compulsory release on bail that is granted to the criminal defendant except for the cases set down by law, including: when the criminal defendant commits an offence punishable with death penalty or life imprisonment or imprisonment of not less than 10 years; or when there are reasonable grounds to suspect that the criminal defendant has destroyed or may destroy evidences. The second is voluntary release on bail that may be granted upon request of the criminal defendant who is not eligible for the compulsory release on bail, provided that a probable cause exists.

21. With regard to release on bail, the charges against Ms. Park constitute criminal offences that are punishable by life imprisonment or imprisonment of not less than 10 years, which is one of the grounds for excluding a criminal defendant from the compulsory release on bail. Although filing a motion for the voluntary release on bail remains a viable option for Ms. Park, she has not yet filed such motion with the court to this day since she was placed under detention.

22. Also, since any compulsory measure against human body inevitably entails restrictions on personal liberty, it is permitted only when stipulated by law.¹¹ Arrest and detention are the

¹⁰ **Article 95 and 96** of the *Criminal Procedure Act*.

¹¹ **Article 199 (1)** of the *Criminal Procedure Act*.

only forms of compulsory measure against human body that are stipulated by the *Criminal Procedure Act*, and house arrest is not provided for in the legal system of the Republic of Korea. While the court may grant release on bail with the condition of limiting the criminal defendant's dwelling to a designated place,¹² it is a measure mainly aimed at preventing the criminal defendant from fleeing after being released on bail, and thus it is different in nature from house arrest as a form of compulsory measure against human body. Furthermore, because Ms. Park has never filed a motion for release on bail, from the outset, her case does not satisfy the initial requirement for being granted bail with the condition of residency restrictions.

23. Consequently, with the absence of the Government's opportunity to hear Ms. Park's motion for release on bail, the Government has never violated Rule 6.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures.

Measures taken to accommodate Ms. Park's health condition

24. At the Seoul Detention Center where Ms. Park is under detention, the director of medical department who is a certified medical doctor conducts regular medical exams on the inmates. In order to ensure that the inmates receive proper medical care, when necessary, the inmates are either transferred to external medical facilities or are allowed to receive medical treatment by doctors visiting from medical facilities outside the detention centre. Accordingly, based on relevant legislation,¹³ Ms. Park is provided with medical care whose quality commensurates

¹² **Article 98 (3)** of the *Criminal Procedure Act*.

¹³ Under the *Criminal Procedure Act*, **Article 34 (Interview, Communication and Medical Examination and Treatment with Criminal Defendant or Criminal Suspect)** stipulates, "[t]he defence counsel or a person who desires to be a defence counsel may have an interview with the criminal defendant or the criminal suspect who is placed under physical restraint, may deliver or receive any documents or things and may have any doctor examine and treat the criminal defendant or the criminal suspect";

Under the *Administration and Treatment of Correctional Institution Inmates Act*, **Article 37 (Medical Treatment, etc. in External Medical Institutions)** stipulates the following: (1) A warden may, if deemed necessary for the appropriate treatment of prisoners, permit them to receive medical treatment in medical institutions outside of correctional institutions (hereinafter referred to as "external medical institutions");

Article 38 (Treatment at One's Own Expense) stipulates, "[i]f a prisoner wishes to receive treatment at his/her own expense from a doctor working for an external medical institution (hereinafter referred to as

with those available for non-inmates, and the Government of the Republic of Korea bears full medical expenses for Ms. Park. Therefore, the Government complies with Article 12 of the International Covenant on Economic, Social and Cultural Rights and Rule 24.1 of the United Nations Standard Minimum Rules for Non-custodial Measures.

25. With respect to specific measures taken to address Ms. Park's health concerns, when Ms. Park complained of dizziness during a court hearing on 30 June 2017, the court took a five-minute break and adjourned. Ms. Park was subsequently sent back to the Seoul Detention Center where her vital signs were checked, and no specific symptoms were identified.

26. On 30 August 2017, Ms. Park was transferred to the Seoul St. Mary's Hospital, where the attending physician diagnosed her with chronic gastric ulcers and reflux esophagitis and prescribed a gastric acid inhibitor which Ms. Park is taking. Also, upon Ms. Park's complain of back pain, she received nerve block injections in the spinal area at the Seoul St.Mary's Hospital on 16 November 2017. The swelling and pain in her left knee are being treated with anti-inflammatory painkillers, according to the prescription of the medical director at the Seoul Detention Center.

27. As of January 2018, Ms. Park's health concerns have been addressed by granting her to receive medical treatment in an external medical institution on three occasions and consult a visiting doctor from an external medical institution and the medical director in the detention centre on two and 40 occasions, respectively, and performing a blood test on her on three occasions when necessary.

28. Aside from knee swelling and pain, Ms. Park is currently maintaining her health condition through regular diet and daily routine, and she experiences no difficulty in walking and going about her daily lives.

"external doctor"), the relevant warden may permit it after considering the opinion of a doctor working for the correctional institution (including a public health doctor; hereinafter referred to as "medical officer"); Under the *Enforcement Decree of the Administration and Treatment of Correctional Institution Inmates Act*, **Article 55 (Treatment by External Doctors)** stipulates, "[w]here deemed especially necessary, any warden may have a doctor who works for an external medical treat prisoners."

Measures taken to ensure Ms. Park's right to counsel and fair trial

29. Since Ms. Park was admitted to the Seoul Detention Center, she has had a total of 193 visitations with her legal counsel, 92 of which were held within the detention centre, 101 in the court, and 20 of which were held on Saturdays with regard to being put on a court hearing four days a week. The Government of the Republic of Korea fully and completely has ensured Ms. Park's right to counsel throughout the entire process.

30. On 13 October 2017, the court issued an additional detention warrant for Ms. Park over which all of the seven defence attorneys representing her resigned in protest on 16 October 2017. The Government subsequently appointed five public defenders on 25 October 2017, but they could not have a meeting with Ms. Park due to her refusal.