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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 has the honour to transmit herewith the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures, dated 22 October 2021 (AL KOR 6/2021).

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 (OHCHR) the assurances of its highest consideration.

20 December 2021

Attached: As stated.



Office of the United Nations High Commissioner for Human Rights (OHCHR)

Response to the Joint Communication from Special Procedures of the UN Human Rights Council

(December 20, 2021)

The Government of the Republic of Korea (ROK) guarantees the right to freedom of association of all individuals within its jurisdiction in accordance with its Constitution, laws, and international human rights standards.

The Constitution and the Trade Union and Labor Relations Adjustment Act (hereinafter referred to as “TULRAA”) guarantee the legitimate activities of trade unions under the ROK jurisdiction. Article 33(1) of the Constitution stipulates the workers' right to organization, collective bargaining and collective action. The TULRAA has specific regulations to protect the activities of trade unions.

According to Article 81(1) of the TULRAA, employers who treat the workers unfavorably due to the latter's lawful activities in the trade unions are punished for unfair labor practices, either by imprisonment with labor for up to two years or by a fine not exceeding 20 million won. When an employer has suffered damages due to legitimate industrial actions under this Act, the employer shall not claim damages against a trade union according to Article 3 of the Act. Also, Article 4 of the Act limits the application of the Criminal Code to illegal activities due to justifiable industrial action by trade unions in certain circumstances. Furthermore, Article 39 of the TULRAA stipulates that a worker shall not be detained for any violation of this Act during a period of industrial actions, except when she or he is caught in the act of committing a crime.

Yang Kyeung-soo, President of the Korea Confederation of Trade Unions (hereinafter, “Mr. Yang” and “KCTU”) was indicted on violations of Articles 49-1(1) and 80(7) of the Infectious Disease Control and Prevention Act, Article 185 (General Obstruction of Traffic) of the Criminal Code, and Articles 16(4) paras. 2 and 3 as well as 22(3) of the Assembly and Demonstration Act. In June and July 2021, he organized repeated demonstrations with over thousands of participants despite the restriction measures imposed by the government, when the risk to public health in the ROK peaked due to the COVID-19 pandemic.

In particular, the July 3 demonstration was planned to be held ignoring the disease control and prevention guidance of the government from its first stage. Based on the plan, the demonstration was held on the main streets of Seoul with over 8,000 participants, without notice. Responding to the demonstration, the government and the public health authorities could not take effective measures to prevent the spread of the infectious disease, while the public was concerned of risk of spread of the infectious disease that may be caused therefrom.

Mr. Yang also admitted in the course of investigations and trials that the demonstrations he held constitute the violations of laws.

- **Detailed information about the factual and legal grounds for the arrest and continued detention of Mr. Yang**

The warrant of detention for Mr. Yang was issued while he was not arrested. When the court set the deadline of suspect interrogation to see the grounds for detention, Mr. Yang did not respond thereto and secluded himself in the office of the KCTU, etc. for approximately three weeks, while declaring that he would hold additional unlawful demonstrations on 15 August and on 20 October of 2021.

Mr. Yang tried to evade criminal punishment and to commit another crime, and the court issued a warrant of detention as it had decided that there are grounds for detention according to Article 201 and 70 of the Criminal Procedure Act.

As the request for the review of legality of detention by the attorney-at-law of Mr. Yang was dismissed by the court, it was a lawful decision grounded on Article 214-2(5) of the Criminal Procedure Act, based on the facts that the issuance of the existing warrant was lawful, and there was no change in circumstances.

In the meantime, the court of first instance made a decision against Mr. Yang on 25 November, 2021, recognizing him guilty of all criminal charges and sentencing him to one year imprisonment with two-year probation and KRW 3 million fines. Under the said decision, Mr. Yang was immediately released.

- **Justification for charging Mr. Yang**

Mr. Yang was detained and indicted pursuant to the criminal procedures stipulated in the Constitution and the laws of the ROK which are in line with the international human rights norms, as he committed crimes such as occupying the main streets of Seoul and increasing the risk of the spread of the infectious disease.

The KCTU assumes that Mr. Yang was detained and indicted for the reason of having executed the “rights to peaceful assembly” provided in the international human rights norms, which is incorrect.

Seoul Central District Court convicted Mr. Yang guilty of all criminal charges, finding that the indictment by the prosecutors was reasonable. The Court judged that he was found guilty of violating the Infectious Disease Prevention Act and others, considering the risk of spreading COVID-19 even at outdoor rallies.

The exercise of rights specified in international human rights norms may be restricted for reasons such as national security, public order, and protection of public health. Rallies that undermine the public health during the COVID-19 pandemic go beyond the scope of the rights under Articles 19 (Freedom of Expression) and 22 (Freedom of Association) of the International Convention on Civil and Political Rights (ICCPR), and the United Nations Declaration on Human Rights Defenders.

In addition, as prescribed by Article 8(1) of the International Labour Organization (ILO) Convention No. 87, workers’ freedom of association and the right to organize should be exercised within the scope of respect for domestic laws and regulations. According to the

conclusions of the ILO's Committee on Freedom of Association (the 334th report, Case No. 2254, para. 1088) the freedom of association shall only be recognized in conditions in which fundamental rights of human life and personal safety are fully respected and guaranteed.

Mr. Yang's imprisonment was a measure to protect the public health and prevent the spread of COVID-19, and it does not go against international human rights norms such as the ICCPR and the ILO Convention No. 87. In addition, it does not constitute undue restrictions on workers' right to freedom of assembly and association.

- **Information as to the reasoning for the alleged deployment of approximately 2,000 law enforcement officers to execute the warrant of detention against Mr. Yang**

The court issued a warrant of detention to Mr. Yang on August 13, 2021, and the police executed the warrant in accordance with laws and principles.

At the time of issuance of the warrant, Mr. Yang expressed his position not to comply with the judicial proceedings. There was also a case in which some 2,000 union members interfered with the execution of the arrest warrant against Mr. Han Sang-gyun, former President of the KCTU in 2015, causing violence against police officers. Considering all these circumstances, the police mobilized the officers to the extent necessary, to put safety as a priority during the execution, preparing for possible emergency situations such as physical clashes that may cause casualties.

It was true that many enforcement officers were mobilized to execute the warrant of detention against Mr. Yang, but it was a preemptive measure to prevent the chances of additional crimes and most of the mobilized officers were on guard, or standby, outside the place of execution of the warrant.

- **Measures taken to guarantee due process and ensure that Mr. Yang receives fair and impartial trial at the court of first instance**

The right to a fair trial is guaranteed for all people in the ROK with no discrimination. Article 27 of the Constitution stipulates the right to a fair and public trial by an independent court. Article 105 and 106 specify the term and the retirement age of judges for the independence of the judicial power, and Article 109 declares the principle of a public trial by stipulating that "trials and decisions of the courts shall be open to the public." The Criminal Procedure Act further specifies the procedures related to the right to a fair trial pursuant to the provisions of the Constitution and Article 14 of the ICCPR.

Under the said principle and procedures, Mr. Yang has been assisted by the attorneys-at-law he appointed, and the trials have been open to the public. The first instance trial proceeded while guaranteeing the rights provided in Article 14 of the ICCPR including the right to assistance of counsel, the right to be presumed innocent and the right to be tried without unreasonable delay.

- **Measures taken to ensure the exercise of the rights to freedom of peaceful assembly and association in light of the COVID-19 pandemic**

The ROK government has continuously made its effort to guarantee the rights to freedom of association by flexibly adjusting the standards applied to assembly depending on the severity

of the spread of COVID-19, even when national safety and health risks persist due to the spread of the virus.

For instance, the ROK government announced the roadmap for a gradual return to normal life on October 29, which increased the limit on the number of assembly participants depending on circumstances. As of December 2021, up to 100 people or 500 fully-vaccinated people can participate in a demonstration.

Nevertheless, the public interest of preventing the spread of COVID-19 also bears an important value amid such unusual situation of the pandemic, and the right to freedom of assembly and association is guaranteed to the extent that it complies with the Infectious Disease Prevention Act to protect such public interest.

The KCTU planned a mass rally in downtown Seoul and other places when everyone in the country had been enduring the daily life restrictions for a long time to prevent the spread of the virus.

Before the rally, the government raised concerns over the spread of COVID-19 and explained to the KCTU that the rally has a risk of violating laws and regulations amid the spread of COVID-19, in order to protect physical and mental health of the participants of the demonstration. It also respectfully requested the KCTU several times that it comply with disease control and prevention guidance and refrain from holding rallies. However, the KCTU organized a mass rally on July 3, violating domestic laws including the Infectious Disease Prevention Act.

The ROK government guarantees to the maximum degree the freedom of holding reasonable activities by human rights advocates, and protects them from any unfair interruption. Human rights activists are free to hold a peaceful assembly and organize or join a private group.

The freedom of expression by human rights advocates is also guaranteed, and the advocates may freely present their opinion and make discourses without any other restrictions than those related to national security or the guarantee of others' rights.

The Government of the Republic of Korea guarantees the freedom of assembly and association of any individual under the jurisdiction of the Republic of Korea under the Constitution and the international human rights standards. The freedom of assembly is stipulated in the Assembly and Demonstration Act in details, and those who intend to hold a demonstration may hold it once they report the details of the demonstration to the police thereunder.

Furthermore, the Act prohibits the interference with an assembly and has the regulations on punishment of those who interfere with a peaceful assembly. The police, prosecutors and military troops shall face aggravated punishment if they interfere with an assembly. When there is a concern of interference, the organizer of an assembly may request protection to the police, and the police shall keep the public order and install the lines to protect assembly participants from violence, protecting the right to a peaceful assembly to the maximum.

If an assembly is not reported in advance, or any violent acts of some participants directly and obviously inflict harm to the public interest and order, it may be subject to the order of disorganization. The police also makes efforts to prevent human rights violation by using

limited types of police equipment provided in the Act on the Performance of Duties by Police Officers and the statutory regulations concerning the use of police equipment and by providing human rights training to police officers.

- **Grounds for legitimacy of maintaining the Notification No. 2020-488 of the Seoul Metropolitan Government**

Mr. Yang argues that the notification by the Seoul Metropolitan Government on prohibition of assembly is excessive compared to the social distancing measure of the central government, discriminatory against such assembly compared to other types of gathering, in violation of the principle of *nullum crimen sine lege* and thus unconstitutional.

However, considering that COVID-19 is a novel virus and that new transmission paths are continuously detected, it cannot be concluded that demonstrations, even if they are held outdoors, have no transmission risk of COVID-19.

The order of the restriction of assembly by the Seoul Metropolitan Government is an inevitable measure to prevent the spread of the infectious disease, given the following facts: participants may contact many unspecified citizens near the site in the course of holding and disorganizing a demonstration; the personal information of the participants may not be accurately managed unlike other events; and there are many chances to spread droplets during speeches or slogan chanting.

Each subparagraph of Article 49(1) of the Infectious Disease Control and Prevention Act specifies measures that can be taken to prevent infectious diseases in detail, and the notification by the Seoul Metropolitan Government is based thereon. Thus, the notification can hardly be deemed as in violation of the principle of legality.

The Seoul Metropolitan Government amended the notification on 29 October 2021 to allow an assembly with less than 100 participants (or with less than 500 participants who are vaccinated or tested negative for COVID-19) to be held across Seoul, in reflection of the current situation where the vaccination rate became higher. It thus satisfies the principle of proportionality.

In addition, if the KCTU were to claim that the notification by the Seoul Government is unconstitutional, it could have tried remedy procedures such as a request for suspension of execution before the assembly. However, it did not even try to take such lawful measures while it had planned the said demonstration several months ago. /END/