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KGV/110/2023

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 submit, as enclosed, the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures, dated 26 April 2023 (AL KOR 1/2023).

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 United Nations High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

23 June 2023

Enclosed: 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

(June 23, 2023)

The Government of the Republic of Korea (ROK) fully guarantees the right to freedom of assembly and association of all individuals of all citizens within its jurisdiction in accordance with its Constitution, laws, and international human rights standards. It criminalizes only violent and unlawful collective actions.

The ROK government also guarantees the collective activities of Solidarity Against Disability Discrimination (hereinafter, “SADD”), including demonstrations for disability rights. However, the violent and illegal collective actions of SADD, including the obstruction of business and traffic, are under investigation by the police and prosecutors.

The investigation targets violent and illegal collective activities. Therefore, the accusations that “SADD is under investigation for its peaceful demonstrations”, “the government is unlawfully investigating SADD,” or “the government is oppressing SADD” are incorrect.

● The complete list and details of all those being investigated on suspicion of criminal conduct or who have been charged with criminal offenses

According to Article 6(3) of the Act on Promotion of the Digitalization of the Criminal Justice Process, no criminal justice agency may gather, store, or use criminal justice information for purposes other than for handling criminal justice affairs. Thus, it is difficult to provide the specifics, such as the list of persons under investigation, because they contain information related to the investigation as well as personal information, the disclosure of which could result in an invasion of privacy.

It was made public by the press that Park Kyeong-Seok, a representative of SADD (hereinafter, “Mr. Park”), had been arrested for declining a police request to appear in the course of the police investigation and released after an investigation. Mr. Park declined a series of police

requests to appear, and, in response, the court issued an arrest warrant, concluding that “Mr. Park is rejecting to appear and there is probable cause to suspect that he committed a crime” (March 16, 2023). The police executed the above arrest warrant lawfully issued by the court on March 17, 2023, investigated him, and released him thereafter on March 18, 2023.

● **Information on the legal basis of the above-mentioned criminal investigations or charges and the legitimacy of these actions given international human rights standards.**

SADD assumes that its members were arrested and prosecuted for exercising their rights to peaceful assembly provided by international human rights norms. This is not correct.

The main charges of SADD under investigation are that they committed violent and illegal criminal acts clearly against the current legal order, including holding an unreported illegal assembly, multiple illegal road occupations outside the scope of a legal assembly and interference with subway operations, violence against public officials performing their public duties, and trespassing on public offices. The division responsible for collective actions of the Prosecutors’ office is investigating the case referred by the police in line with the law and principles.

In addition, the joint communication of the Special Procedures (ALKOR 1/2023) erroneously indicates that transport-related infringements (obstruction of business or traffic) are treated as national security issues (pp.4 and 7). In fact, they are considered collective action cases and are dealt with by a unit specialized in collective action and labor within the Prosecutors’ Office.

The legal grounds for the above investigations and charges are the Criminal Act, the Assembly and Demonstration Act, and the Railroad Safety Act, shown below.

The Criminal Act

Article 136 (Obstruction of Performance of Official Duties) (1) A person who uses violence or intimidation against a public official engaged in the performance of their duties shall be punished by imprisonment with labor for not more than five years or a fine not exceeding ten million won.

Article 185 (General Obstruction of Traffic) A person who damages, destroys, or

blocks a road, waterway, or bridge, or obstructs traffic by other means, shall be punished by imprisonment with labor for not more than ten years or by a fine not exceeding 15 million won.

Article 186 (Obstruction of Train and Vessel Traffic) A person who, by damaging or destroying a railroad, light-house, or its signal or by any other means, obstructs traffic of a train, electric car, automobile, vessel, or aircraft, shall be punished by imprisonment with labor for a limited term of at least one year.

Article 314 (Interference with Business) (1) A person who interferes with the business of another by the method of Article 313 or by the threat of force shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 15 million won.

The Assembly and Demonstration Act

Article 6 (Report on Outdoor Assembly or Demonstration) (1) Any person who desires to hold an outdoor assembly or to stage a demonstration shall, from 48 to 720 hours before such assembly or demonstration is held, submit a report on the details in all the following subparagraphs to the chief of the competent police station.

Article 22 (Penalty Provisions) (2) Any person who violates the provisions of Article 5 (1) or 6 (1) or who holds an assembly or stages a demonstration against which a notice of ban has been issued under Article 8 shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding two million won.

The Railroad Safety Act

Article 49 (Observance of Directions of Railroad Workers on Duty) (2) No person shall interfere with the performance of the duties of railroad workers by means of violence or intimidation.

Article 79 (Penalty Provisions) (1) A person interfering with a railroad worker's performing duties by means of violence or intimidation, in violation of Article 49(2), shall be punished by imprisonment with labor not exceeding five years or by a fine not exceeding 50 million won.

The persons who committed crimes of obstructing the traffic of trains and violated the Assembly and Demonstration Act and the Railroad Safety Act during the SADD demonstration were arrested and indicted pursuant to the criminal procedures provided in the Constitution and the laws of the Republic of Korea, which are in line with international human rights norms.

Mr. Park's case is a representative example. Mr. Park was sentenced to six months of imprisonment of which execution of the sentence was suspended for two years for holding an unreported illegal assembly and illegally occupying a road and obstructing traffic with assembly participants in April 2014. Mr. Park was also sentenced to four months of imprisonment of which execution of the sentence was suspended for two years for interfering with the transportation of passengers by a bus company by force with assembly participants in April 2014 (confirmed by the Supreme Court on December 27, 2019). More recently, Mr. Park was sentenced to four months of imprisonment of which execution was suspended for two years on October 18, 2022, for holding an unreported illegal assembly and obstructing bus operation by force with assembly participants in April 2021, and is currently under the second instance.

- **Details, and where available, the results of any investigation and judicial or other inquiry undertaken in relation to the allegations of ill-treatment reported in the context of the protests**

The alleged abuse against persons with disabilities and human rights advocates during SADD demonstrations was not found.

If the members of SADD were abused or harmed, they may file a complaint or raise an objection to government agencies such as the Ministry of Justice and the National Human Rights Commission, bring the case to the police and prosecutors, and file a claim for damages in court.

The police are cooperating with Seoul Transportation Corporation to enforce the law on the spot to prevent inconvenience to citizens due to SADD's interference with subway operations. The police also prioritize human rights and safety in their response, to prevent any physical

harm to SADD members or citizens in the course of law enforcement.

- **Measures taken by the government to ensure accountability for any possible unlawful acts by law enforcement officials committed while policing assemblies, including the alleged excessive use of force, notably at the commandant level**

In the legal system of the Republic of Korea, there are constant and effective procedures such as investigation, criminal punishment, and disciplinary action applicable to the cases of oppression against social activists, human rights advocates, and unions. Activists, unions, and representatives of human rights entities may file a complaint or raise an objection to government agencies, including the Ministry of Justice and the National Human Rights Commission, when there is oppression by state power.

The Institutions above will investigate the facts under the predetermined procedures upon receiving a complaint or an objection. If crimes related to state power are found, the investigators will take action against the officials in question and bring them to justice. The institutions may also take disciplinary action against the perpetrator.

- **Measures taken by the government to implement the provisions of Articles 9 and 20 of the Convention on the Rights of Persons with Disabilities(CRPD), with a view to ensuring access to transportation on an equal basis with others and that persons with disabilities can fully enjoy their right to mobility in the manner of their choice**

The government has been taking measures to ensure the mobility rights of the mobility disadvantaged, including persons with disabilities. They include the enactment of the Act on Promotion of the Transportation Convenience of Mobility Disadvantaged Persons in January 2005, which stipulates the expansion of transport options, such as low-floor buses and special means of transportation (accessible taxis for persons with disabilities), the installation of convenient mobility equipment. For concrete action plans, the government formulates and

implements a five-year Plan to Enhance the Transportation Convenience of Mobility Disadvantaged Persons (4th Plan in effect as of now).

The government has revised the laws concerning mobility disadvantaged individuals through consultation with organizations representing persons with disabilities and other mobility disadvantaged people. Such revisions include mandating the introduction of low-floor buses when replacing aging buses (entered into force in January 2023) and mandating 24-hour provision and long-distance operation of special means of transportation services to reduce regional transport service disparities (to enter into force in July 2023).

In addition, the government is providing continued budgetary and legislative support, such as increasing government funding from 98.6 billion KRW in 2022 to 189.5 billion KRW in 2023, to facilitate the implementation of projects to enhance the transportation convenience of the mobility disadvantaged.

- **Measures taken by the government open avenues for dialogue with peaceful protestors and disability rights defenders to address their legitimate claims regarding the lack of accessible infrastructure and public budget allocation for the realization of the rights of persons with disabilities**

The government continuously engages with stakeholders, including SADD, to consider requests for budget increases for persons with disabilities.

In March 2022, the Presidential Transition Committee had a dialogue with SADD after the 2022 Presidential Election on March 9. Since then, the government has held meetings with the representative of SADD over 10 times at various levels, including the Deputy Prime Minister for Economic Affairs, the Director General of the Bureau of Policy for Persons with Disabilities of the Ministry of Health and Welfare, and the Director of the Welfare Budget Division of the Ministry of Economy and Finance. Working-level consultation is in progress at all times.

SADD claims that the ROK's budget allocation for persons with disabilities is below the OECD

average (one-third of the OECD average). However, it does not reflect the Prevalence of Disability rate in the ROK (22.5% of the OECD average) and the omission of some welfare budgets for persons with disabilities from the OECD Employment and Labour Market Statistics.

SADD also claims that only a partial amount of its demanded budget was accepted. Still, the 2023 budget for the disability policy of the Ministry of Health and Welfare was increased by 460 billion KRW (approximately 360 million USD) compared to the previous year, including a budget increase of 290 billion KRW (approximately 230 million USD) allocated for personal assistance services for persons with disabilities and support services for persons with developmental disabilities, which SADD had requested. Additional requests will be addressed in consideration of feasibility review and policy priorities.

- **Existing mechanisms and processes to ensure consultation with persons with disabilities in all decision-making processes and to address their concerns**

According to the Act on Welfare of Persons with Disabilities, the Policy Coordination Committee for Persons with Disabilities, chaired by the Prime Minister, coordinates policies for persons with disabilities. Non-governmental members of this committee consist of representatives of organizations of persons with disabilities and experts in related fields, among which half of the commissioned members are persons with disabilities.

The 6th Comprehensive Policy Plans for Persons with Disabilities (2023-2027) were formulated with continuous participation and consultation with key organizations of persons with disabilities. On March 9, 2023, the government devised mid-to-long-term plans for implementing the Policy for Persons with Disabilities through public hearings and reviews of the Policy Coordination Committee for Persons with Disabilities to ensure the involvement of the disability community.

- **Measures taken to ensure that the country's population is informed**

and sensitized to the rights of persons with disabilities, including older persons with disabilities

The government implements disability awareness-raising education and has evaluated the education implementation among compulsory education institutions pursuant to the Act on Welfare of Persons with Disabilities. The number of institutions subject to awareness-raising has increased gradually: state agencies, local governments, public institutions, local government corporations, schools, and kindergartens. As of 2021, the average completion rate of awareness-raising education at these institutions stood at 92.8%.

The educational programs are focused on improving the understanding and positive awareness of disabilities and persons with disabilities, the laws and systems related to the human rights of persons with disabilities, respect for disabilities as an aspect of human diversity, respect for autonomy and independent living of people with disabilities, and the understanding of accessibility to assistive devices and convenience facilities for persons with disabilities. The government has continuously developed programs for professional instructor training and educational content to improve the quality of awareness-raising education.

In celebration of International Day of Persons with Disabilities (December 3), the government annually holds “Disability Empathy Week” and promotes a better understanding of disabilities. In cooperation with the Korea Educational Broadcasting System (EBS 1TV), the Ministry of Health and Welfare produces and broadcasts educational content on disability awareness.

The government has also implemented education on the human rights of senior citizens, the prevention of elder abuse, and reporting obligations pursuant to the Welfare of Senior Citizens Act. Institutions such as welfare facilities for senior citizens and long-term care institutions are obliged to receive education on the human rights of senior citizens, focusing on laws and systems related to the human rights of senior citizens, human rights violation cases within institutions, and reporting guidance.

Pursuant to the Welfare of Senior Citizens Act, the government has designated June 15 as “Elder Abuse Prevention Day” to raise awareness of elder abuse and implemented the nationwide campaign entitled “Navisaegim” to promote and increase respect for the human

rights of senior citizens.

- **Measures taken to ensure that persons with disabilities are fully integrated into Korean society and able to live independently and be included in the community**

The government established a unit dedicated to supporting the independent living of persons with disabilities under the Ministry of Health and Welfare and developed the Roadmap to Support Independent Living of Persons with Disabilities in the Community to ensure the right to choose one's place of residence and phase in the independent living of persons with disabilities in the community.

As a follow-up measure to the Roadmap, the government has implemented a pilot project to establish a support system for the independent living of persons with disabilities in institutions (2022-2024), which aims to expand community services and support institutionalized persons with disabilities to be included in the community¹.

As of April 2023, 45 persons with disabilities have moved to community-based housing and received relevant services under the project². The government is supporting the independent living of 111 persons with disabilities under this project, considering their disability types and the living conditions of communities.

- **Measures taken to ensure that all human rights defenders in the Republic of Korea, particularly those working on disability rights such as Mr. Park, can carry out their peaceful and legitimate activities without fear of judicial harassment, violence, or other restrictions.**

The government recognizes the freedom of assembly and association as fundamental rights of

¹ Pilot project budget: 4.3 billion KRW (approximately 3.4 million USD) in 2022 → 9.7 billion KRW (approximately 7.6 million USD) in 2023

² basic living security services (livelihood and housing benefits), activity assistant services, job opportunities, healthcare (public health centers, regional healthcare centers, etc.), wealth management services, etc.

ROK citizens under the Constitution. Accordingly, peaceful demonstrations, per the procedures provided by the law are fully guaranteed. The right to freedom of assembly is stipulated explicitly 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.

The government prohibits the obstruction of lawful demonstrations and imposes criminal punishment for any violations. In addition, law enforcement officials who interfere with any legitimate demonstration are subject to aggravated punishment. The organizer of any demonstration may request protection from the government if there is any concern that the demonstration may be interfered with.

The Constitution of the Republic of Korea

Article 21 (1) All citizens shall enjoy the freedoms of speech, the press, assembly, and association.

The Assembly and Demonstration Act

Article 3 (Prohibition of Obstruction of Assembly and Demonstration) (1) No one shall interfere with a peaceful assembly or demonstration or disrupt its order by means of violence, threats, or any other means.

(2) No one shall obstruct the organizer and the moderator of an assembly or demonstration in the course of the performance of their duties under the provisions of this Act by means of violence, threats, or by any other means.

(3) In cases where it is feared on reasonable grounds that a peaceful assembly or demonstration may be interfered with, the organizer of the assembly or demonstration may notify the police agency of such risk and request its protection. In this case, the head of the police agency shall not decline such a request for protection without any justifiable reason.

Article 22 (Penalty Provisions) (1) Any person who violates the provisions of Article 3 (1) or (2) shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding three million won. Provided that a member of the armed forces, public prosecutor, or police officer violates Article 3 (1) or (2), they shall be punished by imprisonment with labor for not more than five years.

The government guarantees maximum freedom for human rights defenders to carry out their legitimate activities and protects them from 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. They are guaranteed active and free communication with the government.

Human rights defenders are also guaranteed the freedom of expression. They may freely express and form opinions provided that such activities do not pose a threat to national security or infringe upon others' rights. The ROK's excellent internet infrastructure, in particular, has fostered an environment conducive to exercising of freedom of expression.

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.

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