

Mandates 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

REFERENCE:
AL KOR 3/2017

22 November 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolutions 33/30 and 34/19.

In this capacity, we would like to bring to the attention of your Excellency's Government information we have received in connection with the **detention, prosecution and health of Ms. Park Geun-hye** ('Ms. Park'), the former President of the Republic of Korea.

According to the information received:

On 30 March 2017, Ms. Park was arrested in Seoul, following a Constitutional Court Decision that confirmed her impeachment and lifted her immunity. She was placed the same day in police custody and was formally charged more than two weeks later, on 17 April 2017. The 18 charges retained against her relate to corruption. On 13 October 2017, her detention was extended for an additional six months as the court found that there was a possibility that she would not attend trial and that she could tamper with or destroy evidence.

Since her arrest and detention, her repeated requests for bail, provisional release or house arrest have been denied by the court. Ms. Park suffers from gastric ulcer, knee osteoarthritis, Addison's disease, and back pain, which require regular medical treatment. These conditions appear to have worsened during her detention, due to limited access to adequate healthcare. Moreover, trial proceedings appear to have aggravated the health of Ms. Park, given the length of time that she has been required to sit in the courtroom (four days a week for ten hours a day). Ms. Park fainted on 30 June 2017 in the courtroom because of stress and fatigue.

We have also received allegations that Ms. Park was subjected to intimidating and abusive interrogation techniques (such as sleep deprivation and unduly lengthy interrogations) in order to obtain incriminating information; and that co-accused in separate but related cases have been threatened and coerced to provide information and statements under threat, including threats of arrests to family members, with the aim of obtaining implicating evidence against Ms. Park.

In connection to these allegations, we are expressing our serious concern about the fairness of the judicial proceedings against Ms. Park in relation to the criminal charges she is accused of, and about what appears to be the seriously deteriorating state of her health since her arrest and detention. We also express concern about the court decision to remand her in further detention for six months, despite her health conditions. These allegations appear to contravene the rights related to deprivation of liberty, the rights of the defense and to a fair trial are set forth in articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Korea on 10 April 1990.

With regard to Ms. Park's health in detention, article 12 of the Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by the Republic of Korea on 10 April 1990, states that States have an obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment 14 of the CESCR, para. 34).

In connection with the above alleged facts and concerns, please also refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

In the view of the importance of these allegations, and the risk of unfair trial, we respectfully urge the judicial procedures against Ms. Park, as well as her treatment in detention, to be conforming to the Republic of Korea's international human rights obligations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the reasons for the continued detention of Ms. Park, pending the completion of her trial, including the reasons not to grant to her release on bail or to place her under house arrest with the necessary surveillance if there are risks of tampering with evidence, and how her continued detention is compatible with international norms of fair trial.
3. Please provide information regarding the measures taken to accommodate her specific medical condition, including through regular access to appropriate medical facilities outside the prison, as needed.

4. Please indicate the measures taken to protect the fair trial rights of Ms. Park, including her right to be presumed innocent and her right to defense

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

The Working Group on Arbitrary Detention wishes to inform that after having transmitted this letter of allegation to Your Excellency's Government, it may transmit the case again to the Government through its regular procedure in order to render an opinion on whether the deprivation of liberty is arbitrary or not. The current letter does not prejudice any opinion the Working Group may render. The Government is expected to respond separately to this letter of allegation and to its communication under the regular procedure, should this second communication be sent.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we would like to refer your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which Republic of Korea acceded on 10 April 1990, and in particular the rights of the defense and to a fair trial set forth in articles 3, 9, 10 and 11 of the UDHR and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights. We also wish to reiterate the Principles defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, especially Principles 1, 8, 10, 11, 21, and 33.

Refusal to grant provisional release or house arrest may be contrary to Rule 6.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures, which states

that “pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim”.

With regard to Ms. Park’s health in detention, article 12 of the Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by the Republic of Korea on 10 April 1990, states that States have an obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment 14 of the CESCR, para. 34). In addition, the Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, state that the provision of health care for the prisoners is the responsibility of the State, and that prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)).