

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning alleged irregular surveillance of judges and their representative organisations, interference with their independence and ineffective investigations carried out by the competent national bodies on these issues.

According to the information received:

The Supreme Court of Korea is composed of the Chief Justice and 13 Justices, 12 of whom have adjudicatory functions. The 13th justice of the Supreme Court is appointed by the Chief Justice as Minister of the National Court Administration (hereinafter referred to as 'the NCA').

In addition to its adjudicative functions, the Supreme Court is also responsible for the administration of the South Korean court system. The NCA has overall responsibilities with regard to judicial administration, including human resources management, financial and budgetary issues, accounting, court facilities management, judicial ethics and statistics (article 19 of the Courts Organisation Act).

Under the direction and supervision of the Chief Justice, the Minister of the NCA is responsible for the overall administration of the judiciary as well as for the administrative affairs of the court. The Minister does not need to be a judge, and does not sit on the bench in the Supreme Court trials. The Vice-Minister, who is also appointed by the Chief Justice, assists the Minister in implementing the mandate of the NCA. The Vice-Minister is appointed among judges. Both the Minister and the Vice-Minister have the right to attend and speak in the National Assembly or the State Council if the issue is related to court administrative affairs.

*Surveillance of judges*

From September 2011 to September 2017, it appears that the former Chief Justice Yang Sung-tae and other judges at the NCA used their judicial administrative power to conduct surveillance on certain judges and allegedly interfere with politically sensitive trials. Judges subject to surveillance allegedly include those

who opposed or expressed critical views on the Supreme Court and its policies, in their personal capacity or through academic research groups they belonged to. According to the documents revealed by the Special Investigation Team, the NCA's Planning and Coordination Office, under the direction by Mr. Im Jong-heon, former Vice-Minister of the NCA, prepared documents identifying dispositions of judges who expressed opposing views on the policies that were to be carried out by the Supreme Court in 2014-2016.

The names of judges who expressed critical opinion on the establishment of the Revision Court, which was promoted by the Chief Justice and the Minister of the NCA, were included in a 'blacklist' that would have been created and managed by the NCA. Some password-locked files would have been found in computers belonging to NCA's judges, being their names indicative of an attempt of the NCA to interfere and conduct surveillance on these judges. The Planning and Coordination Office allegedly reviewed the opinions expressed by targeted judges on the introduction of a Revision Court through different means, including investigations on the judge's personal life, political affiliation, property situation, and email exchanges with other judges. The information collected would have been used to exercise pressure on the judges, so as to constraint their freedom of expression and prevent or limit their criticism on the Supreme Court and its policies.

It is also alleged that the NCA used politically sensitive trials as bargaining chips to get the support of the Presidential Office on the establishment of the Revision Court. According to information received, the NCA would have sought and received instructions from the Presidential Office on the desired outcome of politically sensitive cases, and instructed the judges in charge of the case to adjudicate in accordance with the instructions received from the executive branch of power.

Furthermore, the NCA reportedly planned to shut down an anonymous online website of judges, 'Ee-pan-sa-pan-ya-dan-beop-seok,' because of the negative or critical views expressed on the platform on current judicial policies of the NCA (including the creation of a Revision Court). The NCA examined present conditions of the website, analysed statistics on sensitive issues, including 'Recommendation process of Supreme Court justices,' 'Parole of entrepreneurs,' 'Privilege given to the former judges,' and 'The establishment of Appellate Court,' and even considered the possibility of participating in the online discussion disguised as a member of the website.

The Special Investigation Team's report concluded that "the NCA seems to have analysed dispositions or collected personal data of judges who criticized or opposed judicial policies of the NCA or publicly shared their critical views on the recommendation process of Supreme Court justices through unofficial means. While categorizing member judges of certain study associations as a core group, the NCA seems to have analysed those judges' tendencies or responding options

against them based on the NCA's negative impression that those judges criticize the judicial policies based on their politically biased views" (page 90).

#### *Interference with the activities of the International Human Rights Law Society*

The International Human Rights Law Society (hereinafter "IHRLS") is an academic study group created within the judiciary on the basis of the Supreme Court's administrative guidelines on "Composition and Support of Professional Studies". In December 2016, a group of judges created a sub-committee within the IHRLS on human rights and the judiciary (Insamo) to discuss on major issues in the judiciary, including the creation of a Revision Court, the implementation of judicial decisions and the participation of judges in judicial administration.

In March 2017, the International Human Rights Law Society was planning to hold an academic conference to discuss the extensive administrative powers of the Chief Justice of the Supreme Court of Korea, whose power include not only authority over personnel affairs but also allocation of resources and other relevant judicial administrative functions. Mr. Im Jong-heon, Vice Minister of the NCA, supposedly ordered to member judges of the IHRLS to minimize the scale of the event as well as the IHRLS's overall activities.

Furthermore, on 13 February 2017, the NCA announced on "CourtNet", an internal communication network, that it would ban judges' double membership of academic societies, impacting directly on the IHRLS activities. It is alleged that the measure was adopted following reports received by the NCA that many of the judges belonging to the Insamo group were also affiliated with other research groups.

#### *Investigations by the NCA*

Following the disclosure of information about mass surveillance of judges and abuse of power by NCA officers, the NCA of the Supreme Court initiated three internal investigations.

On 24 March 2017, the NCA established an Investigation Committee. On 18 April 2017, the Committee presented its findings. It concluded that the allegations regarding the management of a "judicial blacklist" were unfounded, but acknowledged that the NCA abused its judicial administrative power in the IHRLS case. On 3 November 2017, the NCA established an Additional Investigation Committee to further investigate on the alleged interference with judicial independence perpetrated by the NCA. On 22 January 2018, the Committee announced to have found documents reporting propensity and whereabouts of judges, as well as documents reviewing propensity of the court in charge of particular cases and possible plan for the countermeasures.

On 12 February 2018, a new “Special Investigative Team on the Suspected Abuse of Judicial Administration power” was established to supplement the findings of the Additional Investigation Committee and consider possible follow-up measures. On 25 May 2018, the “Special Investigation Team” revealed 410 suspicious files of surveillance on judges and allegations of judicial intervention in court proceedings by the NCA. However, it concluded that there was no clear evidence of any crime committed by NCA members.

On 15 June 2018, the prosecutor’s office began an investigation on this case. Despite Chief Justice Kim Myeong-Su’s pledge to cooperate with the investigation, district court have allegedly rejected any request to arrest key former and current Supreme Court officials or to grant warrants to search their offices and homes. Of 208 search warrants requested since June 2018, only 23 have been issued as of 4 September 2018. If the figures are accurate, the rejection rate is as high as 89 percent. Reportedly, only 1 percent of search warrants have been rejected for the past 5 years.

Without prejudging the accuracy of the information received, concern is expressed at the above allegations. In connection with the alleged facts and concerns, please 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.

As it my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information concerning the internal investigations conducted by the Supreme Court and the NCA in relation with mass surveillance of judges and abuse of power by NCA officers. We would appreciate if we could receive information about petitions, investigations and discipline of unlawful cases made by the Inspector General for Judicial Ethics of the NCA against judges and/or with the collaboration of NCA’s Director General for Personnel Affairs.
3. Please provide information on the final conclusions of the various bodies established by the Supreme Court of Justice and the NCA to investigate on mass surveillance of judges and abuse of power by NCA officers, and on the measures Your Excellency’s Government has adopted, or intends to adopt, to address these cases and bring the perpetrators to justice.
4. Please provide information on the measures adopted by your Excellency’s Government to protect and promote the independence of the judiciary and

to enable judges to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

5. Please also provide detailed information on the measures that your Excellency's Government has put in place to guarantee, in line with article 19, 21 and 22 of the International Covenant on Civil and Political Rights and principle 8 of the Basic Principles on the Independence of the Judiciary, the exercise by members of the judiciary of the rights to freedom of expression, assembly and association.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

**Annex**  
**Reference to international human rights law**

The independence of the judiciary is prescribed, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Korea on 10 April 1990, and the United Nations Basic Principles on the Independence of the Judiciary.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. In this regard, General Comment No. 32 (2007) of the Human Rights Committee notes that the element of independence requires the judiciary to be free from political interference by the executive branch, as well as the legislature. The Committee notes in particular that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal (General Comment No. 32, para. 19).

Additionally, the UN Basic Principles on the Independence of the Judiciary state, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that the judiciary shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

Moreover, the Basic Principles recognise that “members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary” (principle 8). They also expressly recognise that judges are free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence (principle 9).