

# THE LETTER OF ALLEGATION

## To *Special Rapporteur* on the Independence of Judges and Lawyers

Ms. Gabriela KNAUL

Office of the UN High Commissioner for Human Rights  
United Nations Office at Geneva

8-14 Avenue de la Paix  
1211 Geneva 10, Switzerland  
Fax: +41 22 917 9006  
Tel: +41 22 917 1234  
Email: SRindependenceJL@ohchr.org

### I. INFORMATION CONCERNING THE ALLEGATION

#### The Authors

|             |   |
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| Name        | In-sook KIM, Kyeong-wook JANG,<br>Young-guk KWON, Duk-woo LEE, Tae-wook KIM,<br>Young-sub SONG, and Yu-jung KIM |
| Nationality | Korean  |
| Profession  | Lawyer  |

|         |  |
|---------|--|
| Address | MINBYUN-Lawyers for a Democratic Society<br>34 Banpodaero 30gil # Sin-jeong B/D 5F<br>Seocho-gu Seoul 137-070<br>KOREA |
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| The Victim | The Authors |
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| The Perpetrator | Republic of Korea (ROK) |
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| Violations | <u>Article 16, 18, 23 &amp; 28 of <i>Basic Principles on the Role of Lawyers</i></u> |
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#### Representation

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| Name        | MINBYUN-Lawyers for a Democratic Society                                   |
| Address     | 34 Banpodaero 30gil # Sin-jeong B/D 5F<br>Seocho-gu Seoul 137-070<br>KOREA |
| Email       | asparte1997@gmail.com  |
| Focal point | Kinam KIM, <i>esq.</i>   |

## II. STATEMENT OF FACTS

1. In-sook KIM, Kyeong-wook JANG, Duk-woo LEE, Tae-wook KIM, Young-guk KWON, Young-sub SONG, and Yu-jung KIM (hereinafter referred to as the Authors) are the member lawyers who actively work with MINBYUN-Lawyers for a Democratic Society (hereinafter Minbyun). The Authors are all Korean nationals who are licensed to practice law in Korea. Founded in 1988 under the president Tae-woo Roh, the then authoritarian leader, Minbyun is aimed at furthering progress in the Korean democracy, human rights, and social justice through litigation, research and investigation. Minbyun has 978 member lawyers as of now. Minbyun is headquartered in Seoul, Korea with 8 branches across the nation and 13 committees under secretariat to deal with a wide range of human rights and social justice issues. Minbyun has maintained the special consultative status at UN ECOSOC.<sup>1</sup>
2. The Authors and Minbyun submit that request of the Prosecutors' Office applied to the Korean Bar Association for commencement of disciplinary action against the Authors is in violation of Article 16, Article 18, Article 23 and Article 28 of the Basic Principles on the Role of Lawyers (hereinafter the Principles).

### Application of the Prosecutors' Office for Commencement of Disciplinary Action against the Authors

3. On 3 November 2014, Soo-nam KIM, the Chief Prosecutor from the Seoul Central District Prosecutors' Office (hereinafter the Applicant) officially submitted to the Korean Bar Association (hereinafter the Association) 'application for the commencement of a disciplinary action' (hereinafter the Application) against the Authors in accordance with Article 97-2, Attorney-at-Law Act (hereinafter the Act).<sup>2</sup>
4. Article 97-2 of the Act requires the chief prosecutor of a district prosecutors' office to file an application with the President of the Association for the commencement of a disciplinary action against a lawyer when he discovers any ground for the disciplinary action while conducting prosecutory affairs such as criminal investigation.<sup>3</sup> The grounds for a disciplinary action include: (i) imprisonment no less than twice in connection with the lawyer's duties, (ii) suspension from a disciplinary action no less than twice plus inappropriateness to perform professional duties, (iii) violation of the Act, (vi) violation of a local bar association's regulation, and (v) misconduct damaging his dignity as a lawyer on or off duty.<sup>4</sup>

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<sup>1</sup> For further organizational information, see Minbyun's English website at

<sup>2</sup> See Annex 1. Attorney-at-Law Act

<sup>3</sup> The Act, Article 97-2 (1): The chief public prosecutor of a district public prosecutors' Office shall, when he finds the grounds of the disciplinary action against any attorney-at-law provided for in the provisions of Article 91 while performing prosecutor affairs including criminal investigation, file an application with the President of the Korean Bar Association for commencing the disciplinary action against the relevant attorney-at-law.

<sup>4</sup> Id. Article 91: (1) The grounds for the disciplinary actions falling under subparagraph 1 of Article 90 shall be as follows: 1. Cases where an attorney-at-law is sentenced to imprisonment without prison labor or a heavier punishment on not less than two occasions in

5. According to the Application, the grounds for a disciplinary action against the Authors include violations of Article 24 of the Act that stipulates a lawyer's duty to maintain dignity as a lawyer.<sup>5</sup> Article 24 prohibits any lawyer: (i) from performing any act that damaging his dignity and (ii) from concealing the truth or making false statements in performing his duties.<sup>6</sup>

*In-sook KIM Case*

6. In-sook KIM (hereinafter the Author), born on 16 February 1962, has been engaged in defending fundamental rights and freedom of her clients as an attorney-at-law and member of Minbyun since 2003 in many cases including the right to freedom of expression and peaceful assembly. On 31 May 2014, the Author went to see one of the protestors, Ms. Hyun-joo JIN who was known to be blacked out near the Gwang-wha-mun area in Seoul, Korea and herself dialed 119. The Author paid a visit next early morning to the emergency room of the hospital and left a business card in case Ms. JIN needed any legal help. Next day, Ms. JIN ringed the Author to seek legal counsel, at which point Ms. JIN became a client of the Author.
7. On 9 June 2014, Ms. JIN (hereinafter the client) made a phone call to the Author to say that a police officer came to the client's house and she denied any involvement with the criminal charges that she was accused of. Two days later, the Author explained about summons served to the client who said that she had nothing to do with assault of a police officer that took place near the Gwang-wha-mun area on May 31. The Author notified the police that the client would answer the summons with the Author's company.

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connection with the duties of an attorney-at-law (including cases where a stay of execution is sentenced) and the execution of such sentence is made definite (excluding cases of negligent criminals); and 2. Cases where a person has repeatedly a ground for disciplinary action referred to in paragraph (2) after being subject to a disciplinary action of suspension from duty or heavier action on not less than two occasions under this Act and is deemed highly inappropriate to perform the duties of an attorney-at-law.

(2) The grounds for disciplinary actions provided for in subparagraphs 2 through 5 of Article 90 shall be as follows: 1. Cases where an attorney-at-law violates this Act; 2. Cases where an attorney-at-law violates the regulations of a local bar association with which he is affiliated or of the Korean Bar Association; and 3. Cases where an attorney-at-law commits an act damaging his dignity as an attorney-at-law, regardless of whether such act is committed on or off duty.; and

Id. Article 90: Types of disciplinary actions against attorney-at-law shall be classified into the following five categories: 1. Permanent disbarment; 2. Disbarment; 3. Suspension of practice for not more than three years; 4. Fine for negligence of not more than thirty million won; and 5. Consure.

<sup>5</sup> See the Applications submitted by the Chief Prosecutor from the Seoul Central District Prosecutors' Office to the Association.

<sup>6</sup> The Act, Article 24: (1) Any Attorney-at-law shall be prohibited from performing any act that damages his dignity. (2) Any attorney-at-law shall, in performing his duties, be prohibited from concealing the truth or making false statements.

8. On 13 June 2014 before the client and the Author entered into the police station for the first interrogation, the client told the Author that it was true that she smashed the head of the police officer. However, the client also said that she did not remember exactly what happened because she was wearing platform shoes instead of high-hilled shoes known to be a weapon for the assault against the police officer and she doubted the police officer was bleeding. The Author advised the client to plead the right to remain silent during the interrogation because the client was not sure about what really happened, and the client agreed.
9. When the client was escorted to the interrogation room with the visual recording facility she declined to enter because of claustrophobia that she was suffering. After arguments with police officers on the place to interrogate the client the Author succeeded in persuading them to conduct the interrogation in the investigation team's office.
10. The client verbally expressed her will to exercise the right to remain silent during and in relation to the interrogation when she was asked whether or not she as suspect would exercise the right before the interrogation began. After a while, however, she voluntarily gave answers, without further consultation with the Author, to all the questions that she was asked after questioning identification.
11. The Author was worried about the client's health condition after they spent one hour in the investigation team's office and was able to have a short break outside the office with proper approval. During the break the Author wanted to make sure whether the client knew what she had done in the interrogation by reminding her that she wanted to plead her right to remain silent earlier. The client said, "You are right. I must have been out of my mind." When the client returned to the interrogation, she pled her right to remain silent and refused to further cooperate with any identification on photos and visual recordings.
12. On 23 June 2014 the client was served with notice concerning the court deliberation on validity of the warrant and soon after, the Author was able to obtain details of the warrant including evidences used against the client, particularly the visual recording that captured a scene of the client assaulting the police officer with a high-hilled shoe, who later was bleeding out on his head. The Author advised the client to plead guilty and ask for mercy from the judge. The client agreed.
13. On 24 June 2014 the client recognized under oath that she assaulted the police officer. The client asserted that it was an involuntary action, and that the police employed illegal rabbit-herding arrest tactics, which constituted illegal execution of official duties. It was according to the client's wish that the Author did not participate in the interrogations conducted twice in the police as well as three times in the Prosecutors' Office. The client had pled guilty on the criminal charge against her until delivery of the conviction at the trial court on 22 August 2014.<sup>7</sup> The Author kept representing the client till then.

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<sup>7</sup> See 14hyung-jae58108ho (22 June 2014)

14. On 3 November 2014 the Applicant officially submitted to the Association the Application against the Author in accordance with Article 97-2 of the Act on the grounds that the Author violated both Article 24 (1) and (2) of the Act prohibiting the lawyers from performing any act that damages his dignity as well as from concealing the truth and making false statements.<sup>8</sup> In the Application, the Applicant asserted that the Author met the client on 13 June 2013 at the café in front of the police station and urged the client to plead the right to remain silent although the Author knew that the client hit the police officer with her shoe because the client said so.<sup>9</sup>

Kyeong-wook JANG Case

15. Kyeong-wook JANG (hereinafter the Author), born on 25 May 1968, has been an active member of Minbyun since 2000 and dedicated to defending fundamental right and freedom of his clients in many high profile cases involving falsified espionage.
16. As of June 2012 Ms. Kyung-ae LEE (hereinafter the client), the North Korean defector told her live-in lover that she made confession under cruel treatment that she was subjected during the interrogation at the Joint Interrogation Center of the National Intelligence Service (hereinafter the NIS) when they were undertaking cross interrogation at the Prosecutors' Office.
17. On 26 June 2012 her live-in lover filed a petition to the National Human Rights Commission of Korea (hereinafter the National Commission) that the client made confession under duress at the NIS and, at the same time, requested Minbyun for help, at which point both the Author and another Minbyun member lawyer Gwang-chul LEE (hereinafter the colleague) agreed to represent the client.
18. On 4 July 2012 the Author and the colleague had the first interview with the client. The client was able to describe the cruel treatment in detail that the client went through at the NIS and asked for help. Thorough review of investigative documents convinced the Author that the client was telling the truth that she made confession under duress. Another interview taken in the morning on 17 July 2012 with the client helped assure the Author of credibility on the client's story and, in the afternoon, the Author denied all the charges that the client was indicted for and pled not guilty in the first hearing at trial.
19. Since then, Ok-hee KIM, the then subsection chief at the Seoul Detention Center took frequent interviews with the client during which the chief badmouthed the Author and finally succeeded in disturbing the client. The subsection chief persuaded the client to write the letter of conversion and another letter addressed to the head of the NIS. The subsection chief requested specifically the client to mention the reasons why the client became to dislike the Author in the letter. According to the instruction from the subsection chief, the client wrote, "the Author is delusional and lost because he beautifies hereditary succession system of North Korea." And the client was also instructed to write as if the Author said

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<sup>8</sup> See Annex 2. The Application submitted by the Applicant against the Author.

<sup>9</sup> Id.

to the client, “You have to deny any involvement with the State Security Department of the North Korean government<sup>10</sup> because the prosecutor might be able to demand five years sentence against you for counterfeit issue that she was accused of being engaged in violation of the World Monetary Law.”

20. On 20 August 2012, however, the client revealed during the interrogation at the prosecutors’ office that the letter’s content had nothing to do with her free will and the client wrote it according to the instruction that she was told to do so. On 1 November 2012 the client testified under oath at the fifth hearing that she wrote the letter because the subsection chief instructed her to do so. The client also denied consistently truthfulness of the letter. Despite the best effort of the Author, the client was found guilty for the espionage charge on 14 November 2013.
21. On 3 November 2014 the Applicant officially submitted to the Association the Application against the Author in accordance with Article 97-2 of the Act on the grounds that the Author violated both Article 24 (1) and (2) of the Act prohibiting the lawyers from performing any act that damages his dignity as well as from concealing the truth and making false statements.<sup>11</sup> In the Application, the Applicant asserted that the Author made the client to state false statements, that is, “You must say, “Everything I have mentioned about my involvement with the State Political Security Department was a lie.”<sup>12</sup>

#### Young-guk KWON Case

22. Young-guk KWON (hereinafter the Author), born on 15 August 1963, has been working as a member of Minbyun since 2003 as an Attorney-at-Law taking mostly the cases in connection with illegal labor practices. The Author became deeply involved with the Ssangyong layoffs case by means of legal and non-legal measures since 2009. The Author served as co-counsel with others for dismissed Ssangyong workers in and out of the court. The Author also participated in and played a vital role in organizing protests in order to help resolve the issue in line with the best interest of his clients.
23. On 10 May 2012 when the Author arrived to participate, as a legal counsel, in the press conference that was held to call for the talk with the President to discuss peaceful resolution of the Ssangyong layoffs issue, it had already begun in the street, not in a sidewalk in front of the Cheongun-dong Community Service Center. It was because the police completely blocked the street, pushed participants of the press conference into the street with force, and surrounded them. After the talk with Gyeong-hee Rhu, the then administration officer who was responsible for employment, labor and management issues at the presidential office, the participants of the press conference including the Author were voluntarily dispersed. The Author and other participants did not intend to obstruct the traffic and were impossible to do so under the circumstances.

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<sup>10</sup> For more information on the State Security Department, *See* [http://en.wikipedia.org/wiki/State\\_Security\\_Department](http://en.wikipedia.org/wiki/State_Security_Department)

<sup>11</sup> *See* Annex 3. the Application submitted by the Applicant against the Author

<sup>12</sup> *Id.*

24. On 19 May 2012 the Author participated in the demonstration organized by the Ssangyong laid-off workers to support their campaigns as legal counsel during which the Author marched from the Seoul Station to in front of the gate of Deoksu Palace under the lead of the organizers. At the end of the rally in front of the gate, the Author stayed within the police line and sat in the street for a while until the ending ceremony of the demonstration was over.
25. On 16 June 2012 the Author participated in the walking campaign that was organized by several groups including dismissed Ssangyong workers, Kyunghyang Newspaper, Pressian, Ohmynews, etc. in order to enhance public awareness on the Ssangyong layoffs issue. The participants including the Author of this event walked on a sidewalk from Yeouido Park to Seoul Plaza.
26. On 23 February 2013 the Author joined the ending ceremony of the rally as passive participant during which he was standing and sometimes sitting in front of the vehicle that was used for the stage.
27. On 11 July 2013 the Labor Committee of Minbyun submitted to the Seoul Namdaemun Police Station notice of an assembly to be held in front of the gate of Deoksu Palace, where dismissed Ssangyong workers had held a sit-in for a long time. Previously, Jung District Office set up a flower bed at the site of sit-in and the police had refused to allow demonstration to be held on the sidewalk in front of the flower bed ever since. The police patrolled the area for 24 hours and arrested whoever attempted to demonstrate in the site.
28. The Minbyun lawyers including the Author and other lawyers were organizing the demonstration calling for freedom of assembly to be guaranteed in front of the gate of Deoksu Palace. However, the police did not allow the demonstration to be held.
29. In a lawsuit filed by the Author and other lawyers against the police's disapproval, on 22 July 2013, the Seoul Administrative Court ordered the police to stop blocking the demonstrations. The Court delivered, "The right to freedom of peaceful assembly guaranteed by our Constitution was infringed in front of the gate of Deoksu Palace due to the set-up flower bed and the police force standing around the bed for the purpose of banning illegal demonstration and other assemblies from taking place."
30. Two days later, the police laid the plastic police line on the ground within the site of the demonstration that was supposed to take place and made the police force stand right behind the line. The Author and other participating Minbyun lawyers requested many times to the head of the scene management from the Namdaemun Police Station to withdraw the force from the inside of the site. The head rejected the request. The Author and other lawyers tried to force out the police officers and soldiers from the demonstration site.
31. On 25 July 2013 the National Commission decided in urgent appeal submitted by Minbyun lawyers that such acts of the police constituted a violation of the right to expression and peaceful assembly.

32. On the same day, the Author and other Minbyun lawyers held the demonstration on the same site. The police employed the same way to interfere with it. The Author and other lawyers requested to the same head as above to withdraw the police force from the site of demonstration and guarantee exercise of their right to peaceful assembly in front of the gate of Deoksu Palace, which was rejected again. The Author and other lawyers tried again to push out the police-officers and soldiers interfering with the demonstration. In the process, the police apprehended the Author.
33. On 21 August 2013 the Author and other Minbyun lawyers organized the demonstration on the same site calling for freedom of an assembly to be guaranteed with the same response from the police. The police interfered with the same methods. In addition, women police officers was standing inside the site of the demonstration to set up the police line by their holding the police line type. The participating lawyers approached some women police officers to explain how the police's action was unjust. Soon after, when one of the lawyers happened to protest against the police by grabbing the police line type, the police-officers and soldiers who were waiting behind came into the site of the demonstration to secure the line. The Author and other participating lawyers firmly requested to move back from the site of the demonstration; however, the police did not do so. There was some lawyers' attempt to push the police force out of the site of the demonstration with failure to do so.
34. On 3 November 2014 the Applicant officially submitted to the Association the Application against the Author in accordance with Article 97-2 of the Act on the basis that the Author violated both Article 24 (1) of the Act prohibiting the lawyers from performing any act that damages his dignity.<sup>13</sup> In the Application, the Applicant asserted that the Author's acts from 10 May 2012 to 23 February 2013 constituted breach of the provisions in the Act on Assembly and Demonstration as well as the Road Traffic Act.<sup>14</sup> In addition, the Applicant furthered that on 24 ~ 25 July 2013 and 21 August 2013, the Author had violated not only the Act on Assembly and Demonstration but also a provision of the Criminal Law prohibiting obstruction of performance of official duties resulting in injury.<sup>15</sup>

*Duk-woo LEE, Tae-wook KIM, Young-sub SONG and Yu-jung KIM Case*

35. Duk-woo LEE, born on 25 September 1957, has been a member of Labor Committee at Minbyun since 1990. Tae-wook KIM, born on 18 June 1977, has been actively engaged with the work of Labor Committee at Minbyun since 2008. Young-sub SONG, born on 16 November 1973, has worked with Labor Committee of Minbyun since 2007. Yu-jung KIM, born on 14 February 1981, has been with Labor Committee of Minbyun since 2012.
36. Duk-woo LEE, Tae-wook KIM, Young-sub SONG, and Yu-jung KIM (hereinafter the Authors) had been actively engaged with the Ssangyong layoffs

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<sup>13</sup> See Annex 4. the Application submitted by the Applicant against the Author

<sup>14</sup> Id.

<sup>15</sup> Id.

issue. After the police prohibited any demonstration from being held in front of the gate of Deoksu Palace, the Authors joined the demonstration held on 25 July 2013 as described in paragraph 32, calling for freedom of peaceful assembly to be guaranteed.<sup>16</sup>

37. The Authors orally requested to the police not to interfere with the demonstration. One of the Authors notified the decisions of the Seoul Administrative Court and the National Commission and demanded to move back from the site of the demonstration. Seong-young CHOI, the Security Head (hereinafter Mr. Choi) from the Namdaemun Police Station kept interrupting the demonstration. With the demonstration interrupted, the Authors and Mr. Choi began arguing, inside the site of the demonstration, about whether or not the lawyers were breaching the provisions of the Act on Assembly and Demonstration. During the argument, Mr. Choi said repeatedly to the Authors, “Arrest me” and “Do whatever you wish.” And the Authors suggested Mr. Choi, “Let’s go to the Prosecutors’ Office to determine who’s right.” Mr. Choi said, “O.K. Let’s go.” The Authors then escorted Mr. Choi to outside of the demonstration site and, at some point, grabbed Mr. Choi’s shoulder and arms.
38. On 3 November 2014 the Applicant officially submitted to the Association the Application against the Authors in accordance with Article 97-2 of the Act on the basis that the Authors violated both Article 24 (1) of the Act prohibiting the lawyers from performing any act that damages his dignity.<sup>17</sup> In the Application, the Applicant asserted that the Authors jointly made illegal arrest of Mr. Choi, dragging him about 20m out of the demonstration site while resulting in an injury that took two weeks to heal.<sup>18</sup>

*Disciplinary Procedure pursuant with Attorney-at-Law Act*

39. Upon receiving the Application pursuant with Article 97-2 of the Act, the Association’s President shall determine without delay whether to apply for the commencement of a disciplinary action.<sup>19</sup> The President may ask the Investigative Committee to investigate any fact suspected of giving rise to the disciplinary action.<sup>20</sup>

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<sup>16</sup> For more information, *see*

[http://english.hani.co.kr/arti/english\\_edition/e\\_national/662387.html](http://english.hani.co.kr/arti/english_edition/e_national/662387.html)

<sup>17</sup> *See* Annex 5. the Application submitted by the Applicant against the Author

<sup>18</sup> *Id.*

<sup>19</sup> The Act, Article 97-4 (1): The President of the Korean Bar Association shall, where he receives an application filed for commencing the disciplinary action pursuant to the provisions of Article 89-4(4) (including the case where the provisions are applied *mutatis mutandis* pursuant to the provisions of Article 89-5(3) or 97-2, or a re-petition is filed pursuant to the provisions of Article 97-3(3), determine without delay whether to apply for the commencement of the disciplinary action.

<sup>20</sup> *Id.* Article 97-4 (2): The President of the Korean Bar Association may, where it is deemed necessary to determine whether to apply for commencement of a disciplinary action, have the Investigation Committee to investigate the fact suspected of giving rise to the disciplinary action.

40. If the President rejects the Application or fails to determine admissibility of the Application within three months from the date of receipt of the Application (in this case, until 2 February 2015), the Applicant may appeal to the ‘Attorney Disciplinary Committee of the Association’ (hereinafter the First Committee) on the date when the Applicant receives notice of the rejection or within fourteen days from the date that three months have passed.<sup>21</sup>
41. The First Committee shall commence the disciplinary procedures when the appeal is deemed well-grounded or reject it when deemed groundless.<sup>22</sup> The First Committee consists of nine members including two judges recommended by the Minister of Court Administration, two prosecutors by the Minister of Justice, three lawyers by the general meeting of the Association, and one law professor and one person with good reputation who are not a lawyer to be appointed by the President of the Association.<sup>23</sup> The First Committee may request the Investigative Committee to investigate the fact regarding disciplinary action cases.<sup>24</sup>
42. The Applicant and the Authors may appeal to ‘the Attorney Disciplinary Committee established in the Ministry of Justice’ (hereinafter the Second Committee) for reconsideration if either has objection against the decision of the First Committee.<sup>25</sup> The Second Committee consists of nine members – one

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<sup>21</sup> Id. Article 97-5 (1): Any applicant for the commencement of a disciplinary action may, when the President of the Korean Bar Association declines his application for the commencement of the disciplinary action concerned even after the lapse of three months from the date on which his application is received, raise an objection to the Attorney Disciplinary Committee of the Korean Bar Association. In such cases, such objection shall be raised within 14 days from the date on which the notice under Article 97-4(3) is received or three months have passed since the application was received.

<sup>22</sup> Id. Article 97-5 (2): The Attorney Disciplinary Committee of the Korean Bar Association shall, when the objection raised pursuant to the provisions of paragraph (1) is deemed well-grounded, commence the procedures for the disciplinary action, and when the objection is deemed groundless, decline such objection.

<sup>23</sup> Id. Article 93: (1) The Attorney Disciplinary Committee established by the Korean Bar Association (hereinafter referred to as ‘the Attorney Disciplinary Committee of the Korean Bar Association’) shall be composed of members in each of the following subparagraphs: 1. Two judges recommended by the Minister of Court Administration; 2. Two public prosecutors recommended by the Minister of Justice; 3. Three attorneys-at-law elected at a general meeting of the Korean Bar Association; and 4. One professor of laws and one person with experience and a good reputation, both of whom are recommended by the President of the Korean Bar Association and are not attorney-at-law.

<sup>24</sup> Id. Article 95 (2): The Attorney Disciplinary Committee of the Korean Bar Association may, if necessary for deliberation under paragraph (1), request the Investigation Committee to investigate the fact suspected as giving rise to a disciplinary action.

<sup>25</sup> Id. Article 100 (1): Any suspect subject to disciplinary action and applicant for the commencement of a disciplinary action who are dissatisfied with a decision made by the Attorney Disciplinary Committee of the Korean Bar Association may raise an objection to the Attorney Disciplinary Committee of the Ministry of Justice within 30 days from the date on which he received a notice thereof.;

Id. Article 98 (2): The Attorney Disciplinary Committee of the Ministry of Justice shall decide on a disciplinary action within three months from the date on which it received an objection raised to a decision made by the Attorney Disciplinary Committee of the Korean Bar Association: *Provided*, That if there are unavoidable circumstances, the Attorney

chairperson and eight members. The Minister of Justice shall become a chairperson. The Minister of Justice appoints two judges from among judges recommended by the Minister of Court Administration, two public prosecutors, one lawyer from among lawyers recommended by the President of the Association, three persons from among law professors or persons with good reputation, who are not a lawyer.<sup>26</sup>

43. The Applicant and/or the Authors who are not satisfied by the decision of the Second Committee may appeal to the Administrative Court as prescribed by the Administrative Litigation Act.<sup>27</sup>
44. If the President determines to apply for the commencement of a disciplinary action, the First Committee shall initiate a disciplinary procedure. The rest of the appeal procedure is the same as above.

### III. ALLEGED VIOLATIONS

45. The Authors submit that the application of commencement for a disciplinary action submitted by the Seoul Central District Prosecutors' Office against the Authors amounts to a violation of Article 16, Article 18, Article 23 and Article 28 of the Principles.

#### *Breach of Article 28 of the Principles: Independent and Impartial Disciplinary Proceeding*

46. All complaints against the legal profession including judges, prosecutors and lawyers must be dealt with fairly. According to Article 14 of the International Covenant on Civil and Political Rights (hereinafter the Covenant) and Article 10 and 11 of the Universal Declaration of Human Rights, an independent and impartial body shall be established to carry out fair proceedings with respect to judicial, disciplinary or other actions.

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Disciplinary Committee of the Ministry of Justice may resolve to extend such period within the limit of three months.

<sup>26</sup> Id. Article 94: (1) The Attorney Disciplinary Committee of the Ministry of Justice shall be composed of one chairman and eight members, and shall have eight reserve members. (2) The Minister of Justice shall be the chairperson, and appoint or commission as members and reserve members, two of whom are judges from among the judges recommended by the Minister of Court Administration, two of which are public prosecutors from among the public prosecutors, one attorney-at-law from among attorneys-at-law recommended by the President of the Korean Bar Association and three of whom are professors of laws or have experience and a good reputation, and are not attorneys-at-law.

<sup>27</sup> Id. Article 100 (2): The Attorney Disciplinary Committee of the Ministry of Justice shall, when it deems that the objection under paragraph (1) is well-grounded, make a disciplinary decision of its own, revoking the disciplinary decision made by the Attorney Disciplinary Committee of the Korean Bar Association and when it deems it groundless, dismiss it. In such cases, the provisions of Article 98-2 shall apply mutatis mutandis to the procedures for deliberation on the disciplinary action.

47. The Human Rights Committee (hereinafter the Committee) rendered in *Cedeño v. Bolivarian Republic of Venezuela* that States should take specific measures to guarantee independence of the judiciary, protect judges from any form of political influence, and establish clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary as well as for disciplinary sanctions against them.<sup>28</sup>
48. In addition, the European Court of Human Rights recalled in *Olujić v. Croatia* that in order to establish whether a body can be considered independent, regard must be given, inter alia, to the manner of appointment of its members and to their term of office, to the existence of guarantees against outside pressure and to the question of whether the body presents an appearance of independence.<sup>29</sup>
49. Although the composition, structure and mandate of independent bodies may vary from one judicial system to another, they must act in accordance with international standards.<sup>30</sup>
50. The principle of independence of the judiciary furthers to apply to others in the legal profession. An independent professional organization or bar association should be established to represent the interest of lawyers, regulate their entry to the profession, protect their professional integrity and apply disciplinary proceedings.<sup>31</sup>
51. Article 28 of the Principles stipulates:

Disciplinary proceedings against lawyers ***shall be brought before an impartial disciplinary committee*** established by the legal profession, ***before an independent statutory authority***, or before a court, and shall be subject to an independent judicial review. [emphasis added]

52. The Special Rapporteur on the Independence of Judges and Lawyers emphasized in 2014 annual report that it is contrary to the Principles that license to practice law, as well as disciplinary measures, be controlled by the executive.<sup>32</sup> The Special Rapporteur furthered to support establishment of an independent, self-regulating bar association or council to oversee the process of admitting candidates to the legal profession, provide for a uniform code of ethics and conduct, and enforce disciplinary measures, including disbarment.<sup>33</sup> Such an association would not only provide a mechanism to protect its members against undue interference in their legal work, but also monitor and report on the

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<sup>28</sup> See CCPR Communication No. 1940/2010, *Cedeño v. Bolivarian Republic of Venezuela*, views adopted on 4 December 2012, para.7.3

<sup>29</sup> See ECHR Application No. 22330/05, *Olujić v. Croatia* views adopted on 5 May 2009, para.38

<sup>30</sup> Report of the Special Rapporteur on the Independence of Judges and Lawyers, 26<sup>th</sup> Session of Human Rights Council, 28 April 2014, A/HRC/26/32, para.92

<sup>31</sup> Id. para.94

<sup>32</sup> Id. para.95

<sup>33</sup> Id. para.96

members' conduct, ensuring their accountability and applying disciplinary measures in a fair and consistent manner.<sup>34</sup>

53. The Authors submit that the disciplinary proceeding pursuant with Attorney-at-law Act cannot provide them with independent and impartial disciplinary reviews because the disciplinary proceeding is under the executive's control or at least substantial influence, which is incompatible with international standards including jurisprudence of the Committee as well as Article 28 of the Principles.
54. First, the First Committee's composition fails to protect impartiality and independence from outside interference. As explained in paragraph 41 above, the First Committee that commences a disciplinary action in the Association, is set up in accordance with Article 97-5 (1) and (2) of the Act. The First Committee consists of nine members in accordance with Article 93 (1) of the Act that is stipulating that:

(1) The Attorney Disciplinary Committee established by the Korean Bar Association (hereinafter referred to as 'the Attorney Disciplinary Committee of the Korean Bar Association') shall be composed of members in each of the following subparagraphs:

1. Two judges recommended by the Minister of Court Administration;
2. Two public prosecutors recommended by the Minister of Justice;
3. Three attorneys-at-law elected at a general meeting of the Korean Bar Association; and
4. One professor of laws and one person with experience and a good reputation, both of whom are recommended by the President of the Korean Bar Association and are not attorney-at-law.

Four members, that is, two judges and two prosecutors among a total of nine members are appointed by recommendation of respectively the Minister of Court Administration and the Minister of Justice. It means that both executive and judiciary branch are allowed to participate in the disciplinary proceeding of the Association with voting power to deliberate on a case.<sup>35</sup> In other words, the prosecutors' office that files commencement of disciplinary actions against lawyers makes deliberation on the disciplinary cases. And the judiciary that reviews deliberation of the First and Second Committee makes the first deliberation on disciplinary cases. It shows that the first Committee's composition itself cannot guarantee independence of the disciplinary proceeding from interference from the executive branch, particularly the Ministry of Justice.

55. Second, impartiality of the Second Committee cannot be secured under the current composition and structure. Once any party who become dissatisfied with the deliberation of the First Committee may appeal to the Second Committee for re-review. The Second Committee is set up under the Ministry of Justice in accordance with the Act. It consists of nine members that include the Minister of Justice (chairperson), two prosecutors, two judges recommended by the Judiciary,

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<sup>34</sup> Id.

<sup>35</sup> The Act, Article 98-4 (1): The Attorney Disciplinary Committee of the Korean Bar Association shall make a resolution with the consent of a majority of its members when it completes deliberation on a case

one person recommended by the President of the Association and three persons appointed by the Minister of Justice.<sup>36</sup> It means that the executive branch and persons appointed by it occupy two-third of members of the Second Committee, which clearly shows that the disciplinary proceeding of the Second Committee is under control of the executive branch. It is noted, again, that the prosecutors' office in executive branch files commencement of disciplinary actions against lawyers and it controls the disciplinary proceeding of the Second Committee under supervision of the Minister of Justice.<sup>37</sup>

56. The key in disciplinary actions against lawyers is fairness, which cannot be guaranteed without an impartial disciplinary committee and its independence from undue influence or control outside. Under the Act, the disciplinary committees including the First and Second Committee cannot be impartial and independent because of composition that allows members of the executive and judicial branch to become members of both Committees. In addition, the Second Committee is under in total control of the Ministry of Justice who supervises the prosecutors' office that is supposed to apply for commencement of disciplinary actions against lawyers. This is in clear contravention to Article 28 of the Principles.

Breach of Article 16 of the Principles

57. International standards prohibit the government from sanctioning lawyers on the ground that they are performing their professional functions. Article 16 of the Principles states that:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) ***shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.***  
[emphasis added]

58. First, the Applicant's Application submitted to the Association amounts to administrative sanction targeting against the Author Kyeong-wook JANG for legal advice directed to his client, which is not the first time. The Author has served as defense attorney in espionage cases since he joined Minbyun in 2000. The Author has been dedicated to providing legal representation to North Korean

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<sup>36</sup> Id. Article 94: (1) The Attorney Disciplinary Committee established by the Ministry of Justice (hereinafter referred to as the "Attorney Disciplinary Committee of the Ministry of Justice") shall be comprised of one chairperson and eight members, and shall have eight reserve members. (2) The Minister of Justice shall be the chairperson, and appoint or commission as members and reserve members, two of whom are judges and two of which are public prosecutors from among the judges and public prosecutors recommended by the Minister of Court Administration, one of each whom is an attorney-at-law from among the attorney-at-law recommended by the President of the Korean Bar Association and three of whom are professors of laws or have experience and a good reputation, and are not attorney-at-law. ... (4) The chairperson shall supervise the affairs of the Attorney Committee of the Ministry of Justice and convene and preside over its meetings. ...

<sup>37</sup> Id.

defectors who are not familiar with the Korean legal system when they were accused of espionage charges.

59. For instance, the Author succeeded in proving innocence of his client Woo-sung YOO who was accused of handing over a list of North Korean defectors who settled down in South Korea to the North Korea's State Security Department, which constitutes a violation of the National Security Law.<sup>38</sup> The Author revealed that both the prosecutors' office and the NIS falsified evidences to frame Mr. YOO of espionage.<sup>39</sup> The Author successfully convinced the court to render inadmissible the confession that Mr. YOO's sister made after investigators insulted, humiliated and cajoled her during illegal detention at the Joint Interrogation Center of the NIS.<sup>40</sup> A series of this incident placed the NIS and the prosecutors' office in a politically difficult position. The prosecutors responsible for fabrication of the evidences became subject to disciplinary actions.
60. These were able to happen last April when Ka-ryeo YOO, sister of Mr. YOO held a press conference revealing the truth about what happened to her at the Joint Interrogation Center of the NIS. It became possible with the Author's help as her counsel. It was the Author and other Minbyun lawyers who confronted the NIS to make sure that Ms. YOO was released from illegal custody at the NIS.<sup>41</sup> The press conference disclosed ill-treatment that Ms. YOO was subjected, and those who claimed to be employees of the NIS filed a civil lawsuit, not against Ms. YOO, but the Author for damages on the ground of defamation. They claimed that their reputation was damaged when the Author disclosed the allegation that they treated Ms. YOO badly, which was not true according to them. The court dismissed the lawsuit.<sup>42</sup>
61. There is another case the Author has been involved with. In 2014, the Author represented the client Kang-chul HONG, a North Korean defector who was accused of a spy in an espionage case. The Author disclosed at trial that his client's confession, which is the sole evidence presented by the prosecution, was made without proper Mirandizing. Eventually, the court left it inadmissible and the case was acquitted of espionage.<sup>43</sup>
62. On 27 October 2014, for another example, the Supreme Court ordered that the government should pay two million (2,000,000) KRW to the Author as damages for the reason that the NIS interfered with the Author's right to represent his client.<sup>44</sup> In November 2006 the NIS interrogators dragged, by force, the Author

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<sup>38</sup> See the first trial decision (2013gohap186); the appeal decision (2013no2728); and the final trial at pending as of now (2014do5939)

<sup>39</sup> See the hankyoreh paper, 21 Dec. 2014, available at [http://www.hani.co.kr/arti/english\\_edition/e\\_international/616426.html](http://www.hani.co.kr/arti/english_edition/e_international/616426.html); id., 8 March 2014, available at [http://english.hani.co.kr/arti/english\\_edition/e\\_national/627359.html](http://english.hani.co.kr/arti/english_edition/e_national/627359.html)

<sup>40</sup> Id., 26 April 2014, available at [http://english.hani.co.kr/arti/english\\_edition/e\\_national/634634.html](http://english.hani.co.kr/arti/english_edition/e_national/634634.html)

<sup>41</sup> Id., 30 April 2014, available at [http://english.hani.co.kr/arti/english\\_edition/e\\_national/585202.html](http://english.hani.co.kr/arti/english_edition/e_national/585202.html)

<sup>42</sup> See the court decision 2013gahap520274

<sup>43</sup> See Kang-chul HONG case (2014gohap261, acquitted); appeal at pending (2014no2748)

<sup>44</sup> See the Supreme Court decision: 2014da44574 (27 October 2014)

out of the interrogation room to make separation from his client when the Author gave a North Korean defector client legal advice to remain silent to the irrelevant question with the accusation.<sup>45</sup> Recently, the prosecutors' office has initiated investigation to build charges against the Author for a violation of the National Security Law and applied for a warrant with the court having refused to issue.

63. Indeed, the Author was suffering from harassment and threat made by the prosecutors' office and the NIS. They have targeted the Author because he is the one who challenges against them with the professional capacity as defense attorney in the process of acting in the best interest of his clients, North Korean defectors. The Author successfully failed them in several falsified espionage cases. In return, they harassed and threatened the Author by filing a lawsuit for defamation against him.
64. In addition, suspicious is the timing the Applicant applied the Application in November 2014 based on the event happened in 2012. It is because the Author is expected to appear from 24 December 2014 in the appeal courts to defend his client Kang-chul HONG in the case where he was acquitted of espionage.
65. Therefore, the Author submits that these amount to a violation of Article 16 of the Principles that prohibits the government from threatening lawyers with prosecution or administrative sanctions for their action taken as legal counsel.
66. Second, the Applicant's Application against the Author In-sook KIM also amounts to an administrative sanction for her action discharged as defense attorney in the course of defending her client, which is in violation of Article 16 of the Principles. The Author has also been an active defense attorney for North Korean defectors working closely with Kyeong-wook JANG. The Author defended Kang-chul HONG case,<sup>46</sup> Kyeong-ae LEE case,<sup>47</sup> and several other cases together.
67. The Author contributed to disclosing falsified evidences to frame North Korean defectors on espionage cases. The Author also raised questions about confession that the North Korean defectors made during the interrogation at the NIS and revealed that it was done under duress or ill-treatment. Such actions provoked public condemnation against the prosecutors' office and the NIS. As a reprisal, they are attempting to impose an administrative sanction, which is disbarment or suspension, against the Author for her action as legal counsel. Therefore, the Author submits that the Applicant's Application obviously constitutes a violation of Article 16 of the Principles.

#### *Breach of Article 18 of the Principles*

68. International standards prohibit the government from identifying lawyers with their clients or cases of their clients. Article 18 of the Principles stipulates that:

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<sup>45</sup> See the hankyoreh, 7 Nov. 2014, available at [http://www.hani.co.kr/arti/society/society\\_general/663543.html](http://www.hani.co.kr/arti/society/society_general/663543.html)

<sup>46</sup> See para.61

<sup>47</sup> See para.16~20

Lawyers shall *not be identified with their clients or their clients' cases as a result of discharging their functions.* (emphasis added)

69. The Principles makes clear that although lawyers defend North Korean defectors in espionage cases at court, the government should not recognize them as associates or supporters of North Korean spies or followers of the North Korean government. It furthers to prevent the government from imposing any disadvantages including sanctions based on such identification.
70. However, the Applicant's Application targeting against the Author Kyeong-wook JANG breaches Article 18 of the Principles because the government identified the Author as a North Korea follower. As explained in paragraph 19 above, the then subsection chief at the Seoul Detention Center considered Kyeong-wook JANG as 'delusional and lost because he beautifies hereditary succession system of North Korea,' which cannot occur unless the subsection chief really regarded the Author to be a follower of North Korea. It has happened because the Author has been defending North Korean defectors at the high profile espionage cases that turned out to be fabricated. Therefore, such identification regarding the Author is in violation of Article 18 of the Principles.

*Breach of Article 23 of the Principles*

71. International standards prohibit the government from interfering with the lawyers' exercise of freedom of expression, association and assembly. Article 19 of the Covenant recognizes that 'everyone shall have the right to freedom of expression.' Article 21 of the Covenant also states that the 'right of peaceful assembly shall be recognized.' The Committee held in *Nikolai Alekseev v. the Russian Federation* that the right of peaceful assembly is an essential means for the public expression of one's views and opinions and indispensable in a democratic society.<sup>48</sup> The Committee furthered that the government must put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression by means of an assembly.<sup>49</sup>
72. In addition, Article 23 of the Principles stipulates that:

Lawyers like other citizens are *entitled to freedom of expression, belief, association and assembly.* In particular, they shall *have the right to take part in* public discussion of matters concerning the law, the administration of justice and *the promotion and protection of human rights* and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession. (emphasis added)

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<sup>48</sup> See Communication No. 1873/2009, *Nikolai Alekseev v. The Russian Federation*, views adopted at its 109<sup>th</sup> session, para.9.3

<sup>49</sup> *Id.*

73. First, the Applicant's Application is nothing but a reprisal against the Authors, Young-guk KWON, Duk-woo LEE, Tae-wook KIM, Young-sub SONG, and Yu-jung KIM for their exercise of freedom of expression and assembly in front of the gate of Deoksu Palace in Seoul that was intended to call for freedom of assembly to be guaranteed for dismissed Ssangyong workers who were interfered with exercising such freedom.
74. It is noteworthy that the Authors sought legal measures, the court ordered the police to allow assemblies to be held in front of the gate of Deoksu Palace, and the police still denied it.
75. It is also important to note that the National Commission determined that such prohibition was in violation of the right to freedom of expression and assembly and the police did not border with the decision. The Jung District Office did not remove the flower bed that was aimed at creating space of administrative discretion that the police might be based on to be able to deny applications for any assembly.
76. In addition, the police officer that the Authors escorted to outside of the assembly site constantly interrupted the assembly's order that was taking place. The Prosecutors' Office criminally indicted the Authors for special obstruction of performance of official duties resulting in injury based on their act that the Authors grabbed the shoulder and arms of the police officer to escort to outside of the demonstration site. The first trial is at pending.
77. To add, it has been customary that the prosecutors' office submits application for commencement of disciplinary actions to the Association after all proceedings at court are finalized. However, this time it was far earlier than usual.
78. These facts, thus, conclude that the government intentionally and on purpose interfered with the Authors' attempt to exercise free expression and peaceful assembly in front of the gate of Deoksu Palace and is now attempting to harass, intimidate, and punish the Authors for their acts to promote and protect fundamental right and freedom in our society.
79. In particular, the Author Young-guk KWON has been a defender of rights of labor workers ever since his membership with Minbyun. The Author served as chairperson of Labor Committee at Minbyun for six years and worked closely with labor unionists and workers in and out of court. He often led the counsel in several high profile cases and attracted national attention. For that reason, the government has tried to harass, intimidate and punish him by this Application.

## VI. CONCLUSION

80. Democracy and human rights have been severely deteriorated in our society since 2008. The citizens' exercise of free expression and assembly often were restricted and punished. Now, people have to censor themselves in order not to be indicted before they post on-line any criticism against the President, the government and their policies. Stakeholders and environmentalists who opposed

developmental schemes were suffered from threats. Labor rights including the right to strike guaranteed under our Constitution have never been so. Those who led such opposition movements have been subject to criminal and civil lawsuits and thus, prison term and damages.

81. In addition, it was revealed that the government including the NIS and the Ministry of Defense intervened in social and political affairs including the 2012 presidential election. It was shocking that the NIS and the prosecutors' office falsified evidences to frame North Korean defectors on fake espionage cases. North Korean defectors have given confession on falsified facts under duress and/or in some cojoling tactics of interrogation at the NIS.
82. The government has impaired independence of the National Commission. It conducted its organizational trimming, and budget and staff cut by 21% in 2009. It appointed the current commissioner who was not well experienced in the field of human rights. The commissioner appointed some executive panel members who had not been human rights friendly. Ever since, the National Commission has suffered *de facto* downgrade from International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).
83. On top of it, the government applied for dissolution of one of the left-wing parties and the Constitutional Court ruled to disband it on 19 December 2014.
84. In the recent years, the government has targeted Minbyun lawyers who have defended rights of defenders of human rights and democracy in Korea. The NIS employees filed a lawsuit based on defamation against one of the Authors who revealed the fact that the client was subject to ill treatment during the interrogation at the NIS. The NIS dragged one of the Authors out of the interrogation room during the interrogation when he advised his client to exercise the right to remain silent. The prosecutors' office has tried to indict one of the Authors who have defended North Korea defectors in falsified espionage cases on the ground of a violation of the National Security Law. The prosecutors' office tried to indict one of the Authors who simply participated in the demonstration aimed at promoting and protecting the basic rights of labor workers. These attacks were intended to harass, intimidate and punish Minbyun lawyers for discharging their professional duties as lawyers who has been standing in opposition against the government.
85. Now, the government filed the Application against the Authors to the Association for disciplinary proceedings. The Application named one of the Authors who offered legal advice to the clients to exercise the constitutional right to remain silent during the interrogation. It also named one of the Authors who have been defended the innocent North Korean defectors in falsified espionage cases based on the false accusation that he forced his client to make false statements during the interrogation at the NIS. It furthered to name some of the Authors who held assemblies to call for freedom of peaceful assembly to be guaranteed in relation to sit-in campaign of dismissed Ssangyong workers in front of the gate of Deoksu Palace in Seoul.

86. The basis of the Application includes that the Authors damaged their dignity as a lawyer when they discharged their professional duties in accordance with the Act. It is a logical conclusion that the government has deemed that the Authors damaged their dignity because they did their professional jobs properly when no one else did. And the government including the Applicant tries to harass, intimidate and punish the Authors for it. Unforgettably to note, the government controls or at least can influence substantially the disciplinary proceeding.
87. The Authors and Minbyun submit that the Application means nothing but a reprisal against the Authors for their legitimate professional work and violates international standards including the Covenant and the Principles.
88. Therefore, the Authors and Minbyun respectfully request that Special Rapporteur on the Independence of Judges and Lawyers:
  - Pay your attention to the Application against the Authors and monitor its progress as one of cases with respect to independence of lawyers that have commonly happened not only in Asia but also around the world.
  - Send official letters to the government including the Applicant to stop harassing, intimidating and punishing the lawyers including the Authors who have been defending human rights in Korea.
  - Dispatch, if possible, fact-finding mission to investigate the ground situation on the independence of the lawyers.
  - Send official letters to the government including the Applicant to request withdrawal of the Application and/or stop the disciplinary proceeding and/or the fair & independent proceeding in accordance with international standards.
  - Recommend the government establish the independent and impartial disciplinary proceeding against lawyers.

## V. ANNEX

1. Attorney-at-Law Act
2. The Application submitted against In-sook KIM
3. The Application submitted against Kyeong-wook JANG
4. The Application submitted against Young-guk KWON
5. The Application submitted against Duk-woo LEE, Tae-wook KIM, Young-sub SONG, and Yu-jung KIM