

# Letter of Allegation to the Special Rapporteur on the Independence of Judges and Lawyers

## 1. Information concerning the allegation

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## **2. Background**

1. In Republic of Korea, the National Court Administration (hereinafter referred to as 'the NCA') under the Supreme Court manages budget and human resource of the courts<sup>1</sup>. The key positions within the NCA are taken by judges and the Chief Justice of the Supreme Court and the NCA judges are in charge of personnel affairs, such performance evaluation, transfer of the duty, promotion, rehiring process of the judges as well as planning and execution of the budget. Only one of the Supreme Court Justices could assume the Minister of the NCA position and judges who had taken the NCA's Vice Minister or Director positions are the ones who have high possibility to become the Supreme Court Justices.
2. There has been an allegation that during the former Chief Justice Yang Sung-tae's incumbency from September 2011 to September 2017 that he and judges at the NCA abused their judicial administrative power to conduct massive surveillance on the individual judges and interfered with the cases, hence posed a serious threat to judicial independence. Numerous password-locked files were found in the NCA's computers and the names of the files were sufficient to show that the NCA tries to interfere with politically sensitive trials and conduct surveillance on certain judges. The Supreme Court and the NCA, however, conducted ineffective three internal investigations of their own and are not taking any responsibility after those investigations. These conducts are in clear violation of the ROK Constitution and international human rights standard which guarantee the independence of the judiciary and also violate people's rights to be tried by competent, independent and impartial tribunals.

## **3. Attack on the Independence of the Judiciary**

### **A. Attempt to Break up International Human Rights Law Society**

3. The allegations first emerged when the NCA unjustly tried to minimize the scale of academic conference of judges on the theme of judiciary reform, including democratic distribution of the wide-ranging judicial administrative power of the Supreme Court Chief Justice, in February 2017.
4. International Human Rights Law Society (hereinafter referred as 'IHRLS') is an academic society of judges within the Court. IHRLS was established in October 2011 with approximately 400 judges. Their research focus is mainly on the rights of the social minority and judicial reformation. IHRLS also reviews international human rights norms and tries to apply and implement them within the national legal system. They had been vocal at the UN-led conferences and state review sessions. IHRLS was planning to hold an academic conference in March 2017 with a critical viewpoint on the judicial administrative power of the Chief Justice of the Supreme Court of Korea, whose power encompasses authority over personnel affairs, distribution of budget, and other relevant judicial administrative works. The then-Vice Minister of the NCA Mr. Im Jong-heon ordered member judges of the IHRLS to minimize the scale of the

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<sup>1</sup> <http://eng.scourt.go.kr/eng/supreme/about/organizational.jsp>

event as well as the IHRLS's overall activities. Then, on February 13, 2017, the NCA announced that "Measure on banning judges' double membership of academic societies," seeking to withdraw judges' membership in the IHRLS.

5. While protesting against Vice Minister Im Jong-heon's unduly oppression and minimization toward the IHRLS, suspicions arose that the NCA have been writing and managing judges' personal profile reports to monitor propensity and whereabouts of judges who were critical to the Chief Justice and these judges were disadvantaged in personnel affairs and overseas study opportunities. Meanwhile one judge, who was a member of the IHRLS and protested against the National Court Administration's oppression toward the IHRLS, and who held double duties at the court and the NCA, had to return to the ordinary court after working at the NCA for 11 days.

#### B. Attack on the Individual Judges' Independence

6. The former Chief Justice Yang Sung-tae tried to impose disciplinary measures to a judge at Seoul Central District Court who made a ruling in recognizing state responsibility of temporary measures which were imposed during the military dictatorship, Park Chung-hee. The decision was contrary to the Supreme Court's precedent and when the Chief Justice Yang couldn't find any precedents imposing disciplinary measure to a judge because of his/her particular decision, he even directed other judges to research for similar cases in other countries to justify his intention.
7. Also, the Chief Justice Yang instructed the NCA judges to draft report on a judge's financial status when the judges in question wrote articles to liberal newspapers and posted his criticism on the Court's intranet.

#### C. Undue Influences on the Politically Sensitive Cases

8. During Yang's incumbency, many politically sensitive issues, such as conflict over the construction of the Jeju Civilian-Military Complex Port, Miryang residents' fight against electricity towers, Sewol Ferry disaster, were tried at the courts. For these matters, the UN Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the country and conducted site visits and listened to the victims. The rapporteurs' recommendations to the government were included in their annual reports.
9. Some of these cases have lost on their appeals and numerous victims of human rights violations are still suffering from physical, emotional and financial pain because of the excessive fines and criminal convictions. According the third investigation committee's report, there is circumstantial evidence that Yang had been exercising undue influence on these cases. The victims are now considering requests for retrials of their cases. International community, including the UN, should keep paying close attention to the development of this matter.

### 4. Relevant Laws and Alleged Violations

10. The NCA used politically sensitive trials as bargaining chips in the top court's dealing with the presidential office over organizational changes, delivered directions to the judges and judges' opinions to the Park Geun-hye administration. The NCA also tried to undermine the particular research associations and meetings of the judges because these judges were against the NCA's policies. In addition, the NCA had conducted a massive surveillance on individual judges' private matters, and deleted numerous electronic files to cover up once the surveillance allegation arose. This shows that the NCA under former Chief Justice Yang Sung-tae not just abused its judicial power but committed organized crimes. It poses a grave threat to the independence of the Judiciary in the Republic of Korea.
11. First, they violated people's rights to be tried by competent, independent and impartial tribunals according to the Article 14 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR")<sup>2</sup> and Article 10 of the Universal Declaration of Human Rights<sup>3</sup> as well as Article 103 of the Constitution<sup>4</sup> of the Republic of Korea. The Basic Principles on the Independence of the Judiciary, which was endorsed by the United Nations General Assembly in 1985, also reads as follows:

*Independence of the Judiciary*

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall 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.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

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<sup>2</sup> Article 14 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

<sup>3</sup> Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

<sup>4</sup> Article 103. Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

12. Moreover, the NCA's attempts to undermine particular judges' academic societies and meetings, and its attempts to surveil individual judges would be in violation of Article 19 of the ICCPR<sup>5</sup> and Article 10 of the Basic Principle on the Independence of the Judiciary<sup>6</sup>.

## **5. The Government's Response so far and its Challenges**

### **A. Formation of the Investigation Committee and the result of its investigation (1st investigation)**

13. With complaints from judges and the civil societies, the NCA formed the Investigation Committee and embarked on its investigation on March 24, 2017.
14. Three weeks later, on April 18, 2017, the Investigation Committee announced the result of its investigation. The Committee concluded that the NCA unduly oppressed the IHRLS by pressuring the judges related to the IHRLS to postpone and minimize its academic conference through various measures, and stated that the "Measure on banning judges' double membership of academic societies" was a wrongfully restrictive measure with no urgency and necessity, abusing the NCA's judicial administrative power. Nonetheless, the Investigation Committee concluded that the NCA's unjust human resources affairs and the allegations regarding the management of the 'judicial blacklist' were "unfounded," without even looking into computer files of interest that were locked with passwords in the computers of the NCA judges.

### **B. Request for further investigation and the refusal**

15. With no investigation on the key evidence of computer files, the National Judges' Congress, NGOs, and judges demanded further investigation on this issue. However, the former Chief Justice of the Supreme Court Yang Sung-tae refused to conduct any further investigation insisting that there was no circumstantial evidence as to the existence of the 'judicial blacklist' until the end of his term in the office on September 22, 2017.

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<sup>5</sup> Article 19 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>6</sup> 10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

### **C. Formation of the Additional Investigation Committee and its activities (2nd investigation)**

16. On November 3, 2017, the Supreme Court of Korea finally decided to further investigate the allegations. On November 13 2017, the Additional Investigation Committee was composed mostly with internal officials, and began its supplementary investigation on November 15, 2017.
17. On January 22, 2018, the Additional Investigation Committee announced that numerous documents reporting propensity and whereabouts of judges were found as well as documents reviewing propensity of the court in charge of particular cases and possible plan for the countermeasures, resulting in serious concerns on violation of the independence of the judiciary.
18. The Additional Investigation Committee found that these documents were written by NCA officials who were not affiliated with personnel affairs or inspection division. Those documents contained a wide-range information on not only judges' works related to the court operation, but other areas including individual judges' political tendency, memberships of particular academic societies, family relations, writings on judges' personal accounts of SNS and their personal opinions on the policies of the NCA.
19. The Additional Investigation Committee also discovered a document titled "Trends of various societies regarding decision on National Intelligence Service (NIS) Former Director Won Sei-hoon case". The document was about the appeal case of former Director of NIS, Won Sei-hoon who was alleged to had supported the then-ruling Park Geun-hye administration's presidential election, violating the Public Official Election Act and the National Intelligence Service Act (Seoul High Court Decision, February 9 2015, 2014No2820). The document stated that the NCA had been trying to indirectly locate opinions of the court in charge of the case as regard to the inquiry from the *Cheong Wa Dae* (the Blue House, the name of the Presidential Office) even before the decision was announced. Then the document further stated the NCA's effort on explaining the case to other institutions after the court's decision was announced, as requested by those institutions, as well as other judges' opinions regarding the decision which were posted on the Court's intranet and other online platforms.
20. The Additional Investigation Committee's investigation was criticized for its limitations of duties as it was unable to investigate computers with over 760 locked files of the NCA officials, including those of former Vice Minister Im Jong-heon who directly exercised his power to unjustly oppress the IHRLS.

### **D. Composition and Activities of the Special Investigation Team (Third-phase Investigation)**

21. On February 12, 2018, the Supreme Court established a new 'Special investigation team on suspicion of abuse of judicial authority' (hereinafter referred to as the "Special Investigation Team") to supplement the findings of the Additional Investigation Committee and to establish follow-up measures.
22. The Special Investigation Team decided to re-examine four computers used by the National

Court Administration at its first meeting on February 23, 2018. At the second meeting held on April 11, 2018, the Special Investigation Team revealed that it had found 406 suspicious files of surveillance on judges and allegation of judicial intervention in court proceedings by the NCA. The Special Investigation Team said that they found documents including circumstantial evidence that the government was trying to discipline the judges who ruled that the claims of victims by the former administration's emergency measures should be compensated differently from the Supreme Court's decision.

23. At the third meeting of May 25, 2018, the Special Investigation Team released a final report that they conducted investigation on the suspicious 410 files to find documents regarding surveillance of judges, but stated that there was no judge blacklist which led to professional disadvantage of judges.
24. As a result of the above investigation, the Special Investigation Team confirmed as follows: ① the fact that the individual case was tried to communicate with the Blue House in secret and to strengthen negotiating power in order to enact the establishment of *de facto* the Second Supreme Court<sup>7</sup> under suspected direction of the NCA and then-Chief Justice Yang Sung-tae; ② in such process, the fact that the NCA prepared a review report on the individual cases to hand it in to the trial investigator of the Supreme Court who was in charge of reviewing the case, or examined whether or not to submit the individual cases of appellate court trials to its consensus; ③ the fact that the NCA had constantly tried to check the convictions of the courts in charge of the individual cases; ④ the fact that the NCA exercised unreasonable pressure on IHRLS; ⑤ the fact that the NCA had conducted a wide range of surveillance of judges who were against the establishment of *de facto* Second Supreme Court from personal political orientation, judicial inclination, financial condition, and etc. which were not related to the judicial administration; and ⑥ the fact that officials of the NCA arbitrarily deleted 24,500 files suspected of abusing judicial authority such as "Measures to Respond to the Human Rights Law Societies Group", "A Review of In-Sa-Mo"<sup>8</sup>, and etc. after the judge blacklist scandal arose.
25. Among the documents found in particular, a document called "Strategy for Effective Negotiation with BH<sup>9</sup> for the Successful Legislative Action of the Establishment of *de facto* Second Supreme Court" contained materials as follows: "① historical adjustment within a reasonable scope (restricting national compensation, and etc.); ② judgements considering the protection of liberal democracy and social stability (controversial cases of Lee Sukki, Won Seihoon, Kim Ki-jong, and etc.); ③ judgments considering national economic development as a top priority (cases of the ordinary wage, return of school supporting fees of national universities, KIKO, and etc.); ④ judgments which could contribute to the labor reform (cases of KTX crew,

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<sup>7</sup> It was a policy that some of the cases of the Supreme Court were to be set up and handled by a new court. The policy has been criticized both internally and externally for its possible infringement of the right to a fair trial

<sup>8</sup> Small Group within the IHRLS, the (Korean) Abbreviation Name of 'Justice System for Human Rights Protection'

<sup>9</sup> Meaning the Blue House

layoffs, railway union strike, and etc.); and ⑤ judgments which could be the cornerstone of educational reforms (such as a case of the declaration of the state of affairs by Jeon Gyojo), which have been directly and indirectly added its strength to VIP and BH.”, and also noted that the judiciary had been “coordinating with the BH to prevent unforeseen judicial decisions in cases with a huge national or social impact or cases of politically sensitive events”. In other words, it has been revealed that the extensive pre-emptive communication with Blue House and the Judiciary was made in the final judgment process on many individual cases.

26. Despite the striking findings, the Special Investigation Team decided on May 25, 2018 that there was no controversy that elements of an offence were established or that there was clear suspicion of a crime against the NCA and its members, and decided not to bring specific criminal charges such as requesting investigation or accusation against those involved.
27. Furthermore, the disclosure of the findings was not released in full transparency. The Special Investigation Team has released only 174 out of 410 internal documents under the investigation. Although there were a lot of documents suspected for inappropriate communication with the Blue House such as “(140505) Measure to Allocate Appropriate Trial Court regarding Sewol Ferry Case”, “(141229) Strategy to Deal with MINBYUN” and “(150803) VIP Report”, they were not disclosed for privacy reasons and etc.

#### **E. Limitations on the Supreme Court’s internal investigations**

28. As stated above, the Supreme Court conducted internal investigations three times on their own. However, there remain limitations as the investigation committee members were exclusively composed of internal judges, digital forensics was ineffectively used and no investigation on the former Chief Justice Yang was conducted. Moreover, despite the striking findings, the Special Investigation Team decided on May 25, 2018 that there was no controversy that elements of an offence were established or that there was clear suspicion of a crime against the NCA and its members, and decided not to bring specific criminal charges such as requesting investigation or accusation against those involved.

#### **6. Conclusion**

29. The Special Investigative Committee failed to conduct the full investigation on the former Chief Justice Yang, etc., and failed to obtain all the necessary specific contents and the relevant documents, then jumped to the conclusion that it would be difficult to criminally charge judges who surveilled fellow judges, judges who drafted reports on them, and the former Chief Justice Yang. The Supreme Court still refused to officially recognize their position on the disclosure of the entire documents, nor take responsibilities on the matters. The former Chief Justice Yang also denied all allegations against him in his recent press interview.
30. Accordingly, we request Special Rapporteur on the Independence of Judges and Lawyers to pay close attention to the ROK Judicial corruption allegations, and to swiftly publish press release or



letter to the government considering the seriousness of the matter before 11 June<sup>10</sup> if possible. We specifically ask the Special Rapporteur to make recommendations to the government of Republic of Korea as follows:

1. Fact-finding

- The Supreme Court shall disclose all 410 documents without any redaction.

2. Punishment of those responsible

- The Prosecutor's office shall conduct a thorough investigation without due delay, so that the perpetrators to be held accountable.
- The Supreme Court shall impose disciplinary measures on relevant judges, and remove them from the duty.

3. Reparations

- The government of the Republic of Korea shall take effective measures to make reparations for those who suffered damages from unfair trials as a result of the judicial corruption.

4. Prevention of recurrence

- The Supreme Court shall cooperate to the Prosecutor's investigation to establish concrete preventive measures.

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<sup>10</sup> The national judicial conference is planning to take place on the day and the Supreme Court is expected to announce its position afterwards.