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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 24/5, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the massive lay off, arrest of trade union members and raid of the offices of the **Korean Railway Workers Union (KRWU)** during a demonstration held by their members in connection to a strike claiming better working conditions. The KRWU is a part of the **Korean Confederation of Trade Unions (KCTU)**.

According to the information received:

On 9 December 2013, KRWU's began a strike in protest concerning the Government's rail privatisation and restructuring policy. It is reported that this policy will limit the rights of railway workers in relation to wages, working hours, dismissals, etc. It is reported that the strike was according to law since it followed established procedures, including collective bargaining with the Korean Railroad since July 2013 and mediation by the National Labour Relations Commission. Despite of this, no agreement was found.

It is reported that, as soon as the strike began, the Korean Railroad (Koreail) dismissed over 8,000 union members involved in the strike. According to the information received, on 18 December 2013, Korail filed a lawsuit against 186 trade unionists for obstruction of business and claimed damages amounting to KRW 7.7bn caused by the strike.

According to articles 42(2) and 42-3 of the Trade Union and Labour Relations Adjustment Act 1997, the following must be stipulated: “levels of minimum services to be maintained and provided, the specific work designated as minimum services, the necessary number of workers, etc., in order to ensure the proper maintenance and operation of the minimum services during a period of industrial action”. It is reported that the strike had not compromised the minimum level of service.

On 22 December 2013, it is reported that around 5,000 police officers were deployed in the KCTU building with arrest warrants for eighteen KRWU leaders under the charge of obstruction of business. Reportedly, police assumed six leaders were inside the KCTU building. Allegedly, the police entered the KCTU building without a court-ordered search warrant. The police did not find any of the KCTU leaders in the building.

Concern is expressed at allegations received indicating that right to strike may have been unduly restricted by the massive lay off of trade unions members exercising this right and the charges and arrest for obstruction of business against some them, which carry heavy damage claims. Moreover, concern is expressed about the police’s alleged disregard for the search warrant procedures when they entered the offices of the KCTU.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency’s Government to the following provisions of the International Covenant on Civil and Political Rights (ICCPR):

- Article 19 which provides that “[e]veryone 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;”
- Article 21, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others;” and
- Article 22, which provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully

and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Regarding allegations received indicating that the situation of the mentioned trade unionists is linked to their activities in defense of labour rights and better working conditions, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental

freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate what measures have been taken to ensure that the legitimate rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association are respected and that the physical and psychological integrity of those exercising these rights is guaranteed.
5. Please explain what measures have been taken to ensure that all human rights defenders in the Republic of Korea, in particular those working in the defence and promotion of labour rights, can carry out their peaceful and legitimate activities without fear of harassment.
6. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Frank La Rue

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freedom of opinion and expression

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