

Mandates of the Working Group on Arbitrary Detention; 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 capacity as Vice Chair of the Working Group on Arbitrary Detention; 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 24/7, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **excessive use of force and the alleged arbitrary detention of peaceful protestors and human rights activists commemorating the Sewol ferry accident and during the Labour Day march.**

Mr. Gil-soo Ahn is a member of the **Korean Metal Workers Union.**

Mr. Hyung-jae Ham and **Mr. Hyun-sik Kim** are members of the **People's Committee for the Sewol Ferry tragedy**, which is a network that consists of more than 800 South Korean NGOs who call for an independent investigation into the Sewol ferry tragedy. **Mr. Hyun-sik Kim** and **Mr. Hyung-jae Ham** are also members of the **Korea Alliance for Progressive Movement**, an organisation that was the subject of a previous communication sent 10 July 2008, see A/HRC/10/12/Add.1, case no. KOR 3/2008. We welcome the response of your Excellency's Government received on 15 October 2008. **Coalition 4.16 on the Sewol Ferry Disaster** is an initiative created by the People's Committee for the Sewol Ferry Tragedy and individuals who support the Sewol families.

Mr. Gi-ho Lee is a member of the **General Trade Union**.

Mr. Joomin Park is a legal representative of Sewol families and a lawyer at **MINBYUN - Lawyers for a Democratic Society**.

Mr. Kwon Young-kook is a member of **MINBYUN-Lawyers for a Democratic Society**, a NGO which strives to further the development of democracy in Korea through litigation, research, and investigation.

According to the information received:

Prior to the one year anniversary of the Sewol ferry accident, a peaceful protest was organized on 11 April 2015, calling for an independent investigation into the accident. Following clashes between police and protesters, the organizers of the protest were requested by the police to call an end to the protest, which they complied with. Mr. Hyun-sik Kim and Mr. Hyung-jae Ham were subsequently requested to move the car from which they had been making announcements. As the car was surrounded by police, they had to take an alternative route, at which point the police arrested Mr. Hyun-sik Kim and Mr. Hyung-jae Ham.

On 13 April 2015 the prosecutor's office requested an arrest warrant of Mr. Hyun-sik Kim and Mr. Hyung-jae Ham and a confiscation warrant for their mobile phones. The court subsequently issued a confiscation warrant, at which point their mobile phones were seized. After having searched their phones, the prosecutor's office once again requested an arrest warrant. This request was allegedly based on the additional evidence found on their mobile phones suggesting that they were the main organizers of the protest. On 30 April 2015 the court subsequently issued the arrest warrant.

In parallel to abovementioned events, on 16 and 18 April 2015, protests to mark the one-year anniversary of the Sewol ferry accident and call for an independent investigation into the accident were held in Seoul.. In order to control the protests the police parked buses at road intersections to create barriers that cordoned off the protest area. During the protest on 16 April ten people were arrested following clashes with the police.

On 18 April 2015 thousands of protesters gathered in front of Seoul city hall to hold a memorial ceremony before moving to Gwanghwamun Square to march towards the Presidential Office. Approximately 13,700 police officers and 477 police buses were deployed to block the road to the Presidential Office and to control the ceremonial area in Gwanghwamun Square and Gyeongbok Palace.

The police are reported to have used water cannons containing pepper spray and tear gas against the protesters for up to four hours, which has resulted in injuries of a number of protesters. The police has reportedly arrested 79 protestors, including 21 relatives of the Sewol ferry victims and five minors. Among those arrested there were Mr. Jang-hee Kwon and Mr. Kwang-chul Kang, as they tried to break through the bus barricades made by the police.

The Prosecutor's Office has later requested arrest warrants for five of the 79 arrested protestors, including Mr. Jang-hee Kwon and Mr. Kwang-chul Kang, for violations of the Assembly and Demonstration Act, Article 185 of the Criminal Act (General Obstruction of Traffic) and Article 136(1) of the Criminal Act (Obstruction of Performance of Official Duties).

Mr. Kwon Young-kook, a lawyer, wearing a vest identifying him as a member of the monitoring team was also arrested. The court ruled against the request by the Prosecutor's Office to issue a warrant for his arrest on two occasions. He was subsequently released after 48 hours. Following his release Mr. Kwon Young-kook has received several requests from the police to present himself for further interrogation. However, no charges have been brought against him to date.

On 19 April 2015, at a press briefing, the police stated that "a number of illegal violent acts took place including occupying the streets for hours, physically assaulting police officers, and destroying police equipment" and indicated its plan to "take strict legal action against all those involved in waging illegal violent demonstrations".

Additionally, on 1 and 2 May 2015 at 3 p.m., the Korean Confederation of Trade Unions organised the Labour Day March. Sewol families and members of the Coalition 4.16 on the Sewol Ferry Disaster joined the Labour Day March in solidarity with the workers. Later that day the Coalition organised another protest on the Sewol ferry tragedy, which was joined by many of the Labour Day protestors. Approximately forty people were arrested during these protests, including Mr. Gil-soo Ahn and Mr. Gi-ho Lee.

Several members of the People's Committee for the Sewol Ferry Tragedy, including Mr. Joomin Park, have received summons regarding their involvement in the protests.

To date, Mr. Hyung-jae Ham, Mr. Hyun-sik Kim, Mr. Gil-soo Ahn, Mr. Kwang-chul Kang, Mr. Jang-hee Kwon and Mr. Gi-ho Lee remain in detention.

A trial hearing for Mr. Hyung-jae Ham and Mr. Hyun-sik Kim was reportedly scheduled for 4 June 2015. To date, no trial dates have been announced for Mr. Gil-soo Ahn, Mr. Kwang-chul Kang, Mr. Jang-hee Kwon and Mr. Gi-ho Lee.

Concern is expressed at the alleged arbitrary arrest and detention of human rights defenders and activists as a result of their peaceful protests commemorating the Sewol tragedy and calling for an independent investigation. Further concern is expressed at the excessive use of force against protestors by the police.

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contradiction with article 9 of the Universal Declaration on Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), which the Republic of Korea assessed on 10 April 1990. These articles include the right not to be deprived arbitrarily of liberty that, in particular, contain the right to be informed, at the time of arrest, of the charges made against him.

The above allegations also indicate a prima facie violation of the right to freedom of opinion and expression and right to freedom of peaceful assembly as set forth in articles 19 and 21 of the ICCPR.

We would finally like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the importance of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Has a complaint been lodged by or on behalf of those in detention for their involvement in the protest?

3. 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.

4. Please provide information concerning the legal grounds for the use of force against protestors and how these measures are compatible with international human rights law.

5. Please indicate what measures have been taken to ensure that the legitimate right to meet and assembly peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

6. Please kindly indicate what measures have been taken to ensure that human rights defenders in the Republic of Korea are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Antonio Guevara
Vice-Chair of the Working Group on Arbitrary Detention

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Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
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