

**Mandates of by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers**

REFERENCE: AL  
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12 February 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 25/18 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received in respect of the disciplinary proceedings brought against Mr. **Kyeong-wook Jang** and Ms. **In-sook Kim**, lawyers of MINBYUN - Lawyers for a Democratic Society (MINBYUN).

MINBYUN is a non-governmental organization that aims to contribute to the protection of human rights and to develop democracy in the Republic of Korea through the provision of pro bono legal representation, research and investigation, as well as education and publications. In particular, legal representation is provided to human rights defenders, whose fundamental freedoms or social rights have been challenged, such as freedom of expression, assembly and association.

*In the case of Mr. Kyeong-wook Jang*

According to the information received:

Following a petition a North Korean defector had presented to the National Human Rights Commission of Korea alleging that her confession to espionage before the Joint Interrogation Center of the National Intelligence Service (now the Center for the Protection of Residents Escaping from North Korea) was done under duress, she appointed Mr. Kyeong-wook Jan as one of her counsels on 26 June 2012. On 17 July 2012, Mr. Kyeong-wook Jang denied all indictments made against his client and pled not guilty on her behalf in the first trial hearing. Subsequently, the Seoul Detention Center Subsection Chief interrogated the

defendant multiple times without the presence of Mr. Kyeong-wook Jang. During these interrogations, the Subsection Chief allegedly criticised Mr. Kyeong-wook Jang and intimidated the defendant. Among other allegations, he pressured the defendant to change her plea of not guilty to guilty and to write to the head of the National Intelligence Service to explain her dislike for her lawyer Mr. Kyeong-wook Jang and that he had advised her to deny involvement with the Security Department of the North Korea Government. On 20 August 2012, the defendant confessed at an interrogation at the Prosecutor's Office that she had changed her plea and written to the head of the National Intelligence Service under duress. She testified to that effect under oath on 1 November 2012. The defendant was found guilty of espionage on 14 November 2013.

On 3 November 2014, the Chief Prosecutor from the Seoul Central District Prosecutors' Office submitted an application to the Korean Bar Association for the commencement of disciplinary action against Mr. Kyeong-wook Jang. The application alleges violation of article 24(2) of the Attorney-at-law Act, prohibiting lawyers from concealing the truth and making false statements. The application against Mr. Kyeong-wook Jang was grounded on his alleged legal advice to his client of making false statements and denying espionage. This was allegedly confirmed in a letter written by the defendant to the Head of the National Intelligence Service in July 2012.

*In the case of Ms. In-sook Kim*

According to the information received:

On 31 May 2014 and on 1 June 2014 respectively, Ms. In-sook Kim visited an injured protestor near the Gwang-wha-mun area in Seoul and in a hospital. On 2 June 2014, Ms. In-sook Kim was appointed as the legal counsel of the protestor, who had been accused of assaulting a police officer at the protests on 31 May 2014. On 13 June 2014, following the advice of Ms. In-sook Kim, her client expressed her will to remain silent throughout a police interrogation as she said she was confused regarding the facts of the alleged assault. When her client started answering questions at the beginning of the interrogation, Ms. In-sook Kim reminded her of her right to remain silent, which resulted in her client choosing to exercise that right.

On 23 June 2014, video evidence was obtained of the protestor committing the alleged offence and Ms. In-sook Kim advised her client to plead guilty of assault. On 24 June 2014, her client admitted the alleged offence under oath. She was interrogated a further five times by the police and the Prosecutors' Office without legal representation from Ms. In-sook Kim at her own request. Ms. In-sook Kim no longer represented the protestor after she pled guilty at her trial on 22 August 2014.

On 3 November 2014, the Chief Prosecutor from the Seoul Central District Prosecutors' Office submitted an application to the Korean Bar Association for the commencement of disciplinary action against Ms. In-sook Kim. The application alleges violations of article 24(1) and article 24(2) of the Attorney-at-law Act, prohibiting lawyers from performing any act that damages his or her dignity and from concealing the truth and making false statements respectively. The application against Ms. In-sook Kim was grounded on her alleged participation in the protest of 31 May 2014, visiting and representing the injured protestor and advising her to remain silent in an interrogation, even though the protestor had allegedly confessed her guilt to Ms. In-sook Kim as claimed in a statement made by the protestor to the Prosecutors' Office on 13 June 2014.

While we do not wish to prejudge the accuracy of these allegations, concern is expressed about the grounds for the disciplinary proceedings brought against Mr. Kyeong-wook Jang and Ms. In-sook Kim and the negative impact such proceedings may have on their independence.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide information concerning the process of disciplinary proceedings for lawyers and how these measures are compatible with international norms and standards as stated, inter alia, in the UN Basic Principles on the Role of Lawyers.
3. Please provide substantive information about the legal grounds for the disciplinary proceedings brought against the above-mentioned individuals and indicate how such proceedings are compatible with international human rights norms as contained, inter alia, in the UN Basic Principles on the Role of Lawyers.
4. Please indicate what measures have been taken to ensure that lawyers are able to carry out their legitimate work independently and without fear of disciplinary proceedings.

We would appreciate receiving a response within 60 days.

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.

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the right of lawyers not to be identified with their clients' cases as a result of discharging their functions, contained in article 18 of the UN Basic Principles on the Role of Lawyers adopted by the eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, from 27 August to the 7 September 1990.

Also, we would like to refer your Excellency's Government to the freedom of lawyers to perform professional functions without intimidation, hindrance, harassment or improper interference and without sanctions for actions taken in accordance with recognised professional duties, standards and ethics as provided in article 16 of the UN Basic Principles on the Role of Lawyers.

We would further like to refer your Excellency's Government to the right of independent and impartial disciplinary proceedings contained in article 28 of the UN Basic Principles on the Role of Lawyers.

We would also 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 and 2. Furthermore, we would like to bring to the attention of your Excellency's Government article 9, paragraph 3, point c), which provides for the right to provide legal assistance in defending human rights and fundamental freedoms.