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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
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 situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

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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 situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 16/4, 16/5, and 17/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **a defamation lawsuit brought against the human rights lawyers Messrs. Kyung-uk Jang, Yong-min Kim, and Seung-bong Yang by agents of the National Intelligence Service (NIS) for actions taken in their professional capacity.**

Messrs. Jang, Kim and Yang are lawyers and members of MINBYUN Lawyers for a Democratic Society and have recently worked as defence counsel for Mr. Liu, a Chinese-Korean and North Korean defector, who was arrested and charged with espionage in violation of the National Security Act.

According to the information received:

On 27 April 2013, Messrs. Kyung-uk Jang, Yong-min Kim, and Seung-bong Yang gave a press conference together with their client, Mr. Liu, and his sister. On 10 January 2013, Mr. Liu had reportedly been arrested while he was employed as a civil servant with the Seoul Metropolitan Government on suspicion of espionage. Allegedly, during the press conference, Messrs. Jang, Kim and Yang revealed that the charges against Mr. Kim were solely based on the testimony of his sister.

Sources inform that the three lawyers stated that this testimony was obtained under duress, following a six-month period of confinement at the Central Joint

Intelligence Centre. During this time, Mr. Liu's sister was allegedly not permitted to contact or correspond with anyone outside the Centre where she had been held since her arrival in the Republic of Korea on 30 October 2012. Mr. Liu's sister had reportedly made the statement after prolonged intense questioning by NIS agents but retracted her statement at the press conference on 27 April, claiming that the testimony had been distorted by the agency.

It is reported that on 10 May 2013, three officers of the NIS filed a civil lawsuit against the three lawyers, alleging that by holding the press conference, the three lawyers had defamed the reputation of the NIS and its agents. The lawsuit reportedly claims 200,000,000 KRW (about USD 175,000) from each of the lawyers in damages.

It is further reported that the NIS, or its agents, have on previous occasions filed defamation lawsuits and attempted to claim damages against other individuals who had criticized the NIS in press conferences.

Concern is expressed at the allegations that the three lawyers mentioned above may have been targeted by the National Intelligence Service for exercising their right to provide legal assistance as well as their right to freedom of opinion and expression. Further concern is expressed at allegations that a pattern of civil lawsuits may be emerging aiming to discourage public criticism of the national intelligence agency as well as to obstruct the work of human rights defenders by filing legal suits carrying heavy damages claims.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, that the Republic of Korea acceded to on 10 April 1990, which provides that "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."

The right to freedom of opinion and expression of lawyers is further recognized in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 23, which states: "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.”

In connection to the allegations received indicating that the situation of the lawyers Messrs. Kyung-uk Jang, Yong-min Kim, and Seung-bong Yang is linked to their human rights work, 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 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

In addition, we would like to refer your Excellency's Government to the following principles of the Basic Principles on the Role of Lawyers:

- Principle 16, which states: “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; [...]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.”;

- Principle 18, which states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”;

- Principle 27, which states: “Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.”; and

- Principle 29, which states: “All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.”

Moreover, 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 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 victim?
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 explain what measures have been taken to ensure that defamation laws and other legal restrictions on the right to freedom of expression do not unduly restrict basic human rights and fundamental freedoms and do not interfere with the activities carried out by human rights defenders, such as their right to offer legal representation.
5. Please explain what measures have been taken in order to ensure that human rights defenders in the Republic of Korea can carry out their legitimate and peaceful activities without fear of judicial harassment or other restrictions.

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

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

Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers