

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

REFERENCE:  
AL KOR 6/2021

22 October 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 42/22, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of a human rights defender and trade unionist, Mr. **Yang Kyeung-soo**, for the legitimate exercise of his rights to freedom of expression and freedom of peaceful assembly and of association.

Mr. Yang Kyeung-soo is President of the Korea Confederation of Trade Unions ("KCTU"), the representative organization of workers' rights and the trade union movement in the Republic of Korea. Mr. Yang was involved in a peaceful demonstration held on 3 July 2021 in the defence of workers' rights and has been advocating for the advancement of the Republic of Korea's labour laws in line with international standards. He has campaigned for urgent government actions to prevent further work-related deaths of frontline workers, as well as the strengthening of labour protection and social security rights since the start of the Covid-19 global pandemic.

Over the past months, KCTU has organised a number of activities to advocate for the protection of workers' rights, in response to the economic and employment crisis that resulted from the Covid-19 global pandemic. KCTU has raised particular concerns in response to a stark number of deaths of delivery workers since the start of the pandemic, reportedly caused by overwork, with a reported 21 deaths in total.

We have previously raised concerns, in communication KOR 3/2016, about the arrest, detention and sentencing of a former leader of the KCTU, which appeared to be in relation to the exercise of their rights to freedom of expression and freedom of peaceful assembly and of association in their human rights work defending labour rights in the Republic of Korea. We thank Your Excellency's Government for its response on 28 October 2016; however, we remain concerned given the new information received on the arrest and detention of another union leader, in connection with his role in organising a number of assemblies for the protection of workers' rights.

According to the information received:

On 13 August 2021, an arrest warrant was issued by the Seoul Central District Court for Mr. Yang, following his active role in organising rallies between

May and July 2021, as well as a demonstration on 3 July with over 8,000 participants, according to the KCTU, aimed at defending workers' rights. The warrant was issued pursuant to charges of organising public rallies in violation of Articles 49-1(1) and 80(7) of the Infectious Disease Control and Prevention Act, Article 185 (General Obstruction of Traffic) of the Criminal Code, and Articles 16(4) paras. 2 and 3 as well as 22(3) of the Assembly and Demonstration Act (ADA), which carries possible penalties of up to one year in prison or a fine of up to one million Korean won.

As of 24 November 2020, the Seoul Metropolitan City Government announced the prohibition of any assembly attended by over ten people in the region of Seoul via the "Notification of Restriction of Rallies in the Entire Area of Seoul to contain the Covid-19" (Notification No. 2020-488). The validity of this notification has been extended several times and is still enforced to date, although other activities such as indoor political conventions, concerts and sporting events have been authorised. On 25 June, Seoul authorities denied a permit for the 3 July rally organised by KCTU, citing, inter alia, Covid-19-related restrictions on assemblies of over ten people. KCTU's legal representatives filed a constitutional claim on 29 June against this decision to deny their permit. In the latter claim, KCTU firstly opposed the application of the blanket ban on all assemblies over ten people imposed by the Seoul municipal government, which they called disproportionate in comparison with the central government's more flexible social distancing measures that adjust according to the number of new Covid-19 cases. Secondly, KCTU argued that the application of the ten-person limit to the rally was discriminatory. Finally, they alleged that since the Infectious Disease Prevention and Control Act provides for sanctions based on violations of administrative guidance announced by city or district administrative bodies, it contravenes the constitutional principle of *nullum crimen sine lege*.

Notwithstanding the lack of permit, union leadership committed to follow the government's social distancing guidelines and held the rally peacefully on 3 July - drawing approximately 8,000 participants. The apparent lack of new Covid-19 infections reported by participants following the demonstration, as attested by the Korean Disease Control and Prevention Agency in its regular briefing on 26 July, would further support that union membership adhered to Covid-19 prevention protocols.

Mr. Yang was arrested early in the morning of 2 September at a KCTU office in central Seoul by the Seoul Metropolitan Police Agency. Approximately 2,000 law enforcement officers - including 100 investigation officers - and 41 police units from the Seoul Metropolitan Police Agency were deployed to execute the warrant. Mr. Yang was presented with a warrant for his arrest as well as a search warrant for the KCTU office, and thereafter taken into custody at the Seoul Jongno Police Station. Mr. Yang's legal representative and family were immediately informed of his arrest.

On 6 September, police sent Mr. Yang's case to the Seoul Central District Prosecutor's Office, recommending an indictment with detention. That same day, Mr. Yang was transferred at 8.00am local time to the Seoul Detention Centre. The prosecutor's office indicted him on 15 September with charges of violating the Infectious Disease Prevention and Control Act, the Assembly and

Demonstration Act and obstruction of general traffic under the Article 185 of the Criminal Law.

Mr. Yang received access to legal representation through the KCTU legal centre. On 15 September, his legal representatives requested a review of the lawfulness of his arrest and detention. Under its international legal obligations and Korean law, authorities are required to release Mr. Yang, pending trial, barring exceptional circumstances such as an existing and credible flight risk or the risk of commission of serious crimes. The application to review Mr. Yang's case was dismissed by the Seoul Central District Court, which ruled that the defendant will remain in detention throughout the judiciary process and set the date of the first hearing to 30 September.

Further to the request of his lawyers, the Seoul Central District Court announced its decision on 28 September to delay the first hearing to 19 October as the investigation process was delayed.

At the first hearing on 19 October, Mr. Yang disputed the constitutionality of the Infectious Disease Control and Prevention Act, as well as the related administrative notification by the Seoul Metropolitan government. The date of the next hearing was set to 2 November.

We express concern at the arrest and detention of Mr. Yang, which may be arbitrary, and which appears to be in relation to the exercise of his rights to freedom of expression and freedom of association and of peaceful assembly in his human rights work defending labour rights in the Republic of Korea. Further concern is expressed at the fact that this arrest and detention seem to form part of a broader pattern to impose undue restrictions on the freedoms of expression as well as of peaceful assembly and association of workers' unions and their leaders.

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 in the situation described above.

We would like to remind your Excellency's Government that Articles 19 and 22 of the International Covenant on Civil and Political Rights guarantee the rights to associate and assemble peacefully to workers. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights by workers must be provided by law and be necessary and proportionate to the aim pursued.

Furthermore, the International Labor Organization (ILO) convention n° 87 in its Article 11 provides the obligation for States to undertake all necessary and appropriate measures to ensure they may freely exercise such a right.

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

We are issuing this appeal in order to safeguard the rights of Mr. Yang from irreparable harm and without prejudicing any eventual legal determination.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and continued detention of Mr. Yang.
2. Please provide information concerning the justification for charging Mr. Yang with crimes under the Infectious Disease Control and Prevention Act, the Infectious Disease Control and Prevention Act, and Article 185 of the Criminal Law, for his role in organising peaceful rallies in support of workers' rights, that had adhered to official Covid-19 prevention protocols.
3. Please provide information as to the reasoning for the alleged deployment of approximately 2,000 law enforcement officers to execute the arrest warrant against Mr. Yang.
4. Please provide information on measures taken to ensure that Mr. Yang receives the guarantees of due process and a fair and impartial trial at the court of first instance, in accordance with international human rights law.
5. Please indicate what measures have been taken to ensure that human rights defenders, trade unionists and workers in the Republic of Korea are able to continue to carry out their legitimate work and exercise their rights to freedom of peaceful assembly and association, in a safe and enabling environment without fear of threats or acts of intimidation, harassment or persecution of any sort, particularly in light of the Covid-19 pandemic, and with restrictions related to Covid-19 measures that remain necessary and proportionate to the aim pursued.
6. Amid the ongoing Covid-19 pandemic, please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed. Please indicate on which grounds the maintaining of Notification No. 2020-488 of the Seoul Metropolitan Government is justified.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

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

Clément Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Miriam Estrada-Castillo  
Vice-Chair of the Working Group on Arbitrary Detention

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

## **Annex**

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

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the human rights standards and obligations as listed in the present Annex.

The abovementioned allegations appear to be in contravention with Articles 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Korea on 10 April 1990 which provides that no one shall be subjected to arbitrary arrest or detention; everyone shall have the right to hold opinions without interference; everyone shall have the right to freedom of peaceful assembly; and everyone 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.

We would also like to refer to Article 20(1) of the Universal Declaration on Human Rights (UDHR) which guarantees the right to freedom of peaceful assembly and association to all.

The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association further noted in a report (A/HRC/41/41) that States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards, ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination. Such positive and negative obligations are further recognised by the Human Rights Committee in its General Comment n°37, in which it noted that States must allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The Committee further declared that restrictions on such assemblies must be appropriate responses to a pressing social need, and the prohibition of a specific assembly can be considered only as a measure of last resort (CCPR/C/GC/37, paras. 37 and 40).

Moreover, the Special Rapporteur also recalled in his report on exercise and enjoyment of the rights to freedom of peaceful assembly and of association in the workplace (A/71/385) that the rights to freedom of peaceful assembly and of association are fundamental worker rights. The ICCPR provides that States must respect assembly and association rights and ensure that all people within their territory and jurisdiction enjoy them, and, through law, provide remedies and effective enforcement. States must also refrain from violating rights recognized by the Covenant, and are accountable for violations of those rights when the infringement occurs as a result of its failure to secure the right in domestic law and practice. The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires that States ensure that people can organize and join workers' associations that address their concerns, and that particular attention be given to domestic workers, inter alia. The Special Rapporteur further noted that both trade unions and the right to strike are fundamental tools to achieving workers' rights, as they provide mechanisms through which workers can stand up for their interests collectively, and engage with big business and government on a more equal footing. The ICCPR and the ICESCR both explicitly protect the right to form and join trade unions, while the ICESCR implicitly raises the notion that States should promote trade unionism among workers.

We would also like to recall article 19 of the ICCPR, which provides the right to freedom of opinion and expression, which forms a basis for the full enjoyment of a wide range of other human rights, including the freedom of assembly and association. As per article 19(2), the freedom of expression includes the “right to seek, receive and impart information and ideas of all kind, regardless of frontiers” and in any form of media. Article 19(3) requires that any restriction on the right to freedom of expression is (i) provided by law; (ii) serves a legitimate purpose; and (iii) is necessary and proportional to meet the ends it seeks to serve. In this connection, we also wish to recall the principle enunciated in Human Rights Council Resolution 12/16. The Resolution calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. In this connection, we wish to remind your Excellency’s Government that no attack on a person, including such forms of attack as arbitrary arrest, because of the exercise of their freedom of opinion or expression, is compatible with article 19.

Furthermore, we would like to recall that the International Labor Organization (ILO), in its convention n° 87, guarantees at its Articles 2 and 11 the right for workers to establish and to join organisations of their own choosing without previous authorisation, and the obligation for States to undertake all necessary and appropriate measures to ensure they may freely exercise such a right, respectively. The ILO has further held in its Issue paper on Covid-19 and fundamental principles and rights at work that “restrictions on those essential civil liberties should be confined to circumstances of extreme gravity and on the condition that any measures affecting the application of fundamental rights be limited, in scope and duration, to what is strictly necessary to deal with the situation in question.”

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

In this context, we wish to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5(a) and (b) which provide for the right to meet and assemble peacefully; and to form, join and participate in non-governmental organizations, associations or groups;

- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and

- Article 12, (1) and (3) which provide for the right to participate in peaceful activities against violations of human rights and fundamental freedoms and for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts, attributable to States that result in violations of human rights and fundamental freedoms.

We finally wish to refer to the Human Rights Committee's General Comment N° 35 on Article 9 that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion, expression, assembly and association, is arbitrary (CCPR/C/GC/35, para. 17).