

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

REFERENCE: AL KOR 3/2016:

26 July 2016

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 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 five-year prison sentence brought against a human rights defender and trade unionist, **Mr. Sang-gyun Han, for the legitimate exercise of his rights to freedom of expression and freedom of association and of peaceful assembly.**

Mr. Sang-gyun Han 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. Han was involved in peaceful demonstrations held in the defence of workers' rights between April and November 2015 and has been critical of the Republic of Korea's labour laws. He campaigned for increased accountability in relation to the Sewol ferry sinking in April 2014 and had been critical of the Government in the aftermath, during which time it emerged that many of the crew had reportedly been employed on temporary contracts and as such, had not been provided with full safety training.

Excessive use of force and the alleged arbitrary detention of peaceful protestors and human rights activists commemorating the Sewol ferry accident in April 2015 and during the Labour Day march in May 2015 have been the subjects of a communication sent by various Special Rapporteurs on 11 June 2015 (see A/HRC/31/79, case no. KOR 2/2015). We acknowledge the response received from your Excellency's Government on 1 February 2016; however we remain concerned given the new information received.

According to the information received:

On 23 June 2015, an arrest warrant was issued for Mr. Sang-gyun Han following his active role in the organisation of demonstrations in April and May 2015, aimed at expressing solidarity with victims of the Sewol ferry sinking. Mr. Han subsequently refused to submit himself to the authorities, fearing that he would be detained for the exercise of his right to peaceful assembly. Mr. Han went into hiding in KCTU offices and afterwards in a Buddhist temple in Seoul. Mr. Han was arrested on 10 December 2015, as he was leaving the temple which was surrounded by police.

On 13 June 2016, the prosecution in the case against Mr. Han sought a sentence of eight years imprisonment for “the organization of an illegal rally”, which had taken place on 14 November 2015. According to the prosecution, the sentence length was justified by the refusal of Mr Han to submit himself to the authorities, which considering his position of influence as President of KCTU, was a “major crime which could destroy the basis of rule of law”.

On 4 July 2016, Mr. Han was sentenced to five years imprisonment and was held at Seoul Detention Centre. On 8 July, Mr. Han filed an appeal against his sentencing and on 11 July an appeal was also filed by the prosecutors, seeking a longer prison term against him.

It is reported that other members and officers of KCTU have also been charged in relation to the demonstration held on 14 November 2015 in protest of proposed labour law reforms. At that demonstration, protestors were allegedly met with disproportionate force from the authorities who mobilized officers and put in place water cannons and spray devices.

Concern is expressed at the arrest, detention and sentencing of Mr. Sang-gyun Han, which appear 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 alleged judicial harassment of his colleagues at KCTU for the exercise of their right to freedom of peaceful assembly. Additionally, we are concerned by the alleged disproportionate use of force by the authorities at the demonstration on 14 November 2015.

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.

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, 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 information concerning the justification for charging Mr. Han with the crime of “organization of an illegal rally”. Please also explain how this and the refusal of Mr. Han to submit himself to the authorities justifies a sentence of five years imprisonment, and explain how this is compatible with international human rights law.

3. Please provide information on measures taken to ensure that Mr. Han received the guarantees of due process and a fair and impartial trial at the court of first instance, in accordance with international human rights law. Please provide information about measures taken to ensure that following his appeal, the same guarantees of international human rights law will be ensured.

4. Please provide the details, and where available the results, of any investigation carried out in relation to the disproportionate use of force by the authorities regard the demonstration held on 14 November 2015. Please provide information about any instructions given by the authorities to law enforcement officials regarding the use of force. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please provide the full details of any prosecutions which have been undertaken in this case.

5. Please 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, harassment or persecution of any sort.

6. 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.

We would appreciate receiving a response within 60 days.

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.

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.

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
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 attention to the following human rights standards:

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 reiterate the principle enunciated in Human Rights Council Resolution 12/16, calling on states to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on reporting on human rights, government activities and corruption in government, peaceful demonstrations and expression of opinion and dissent.

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 would also like to reiterate the principle enunciated in Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would finally like to refer your Excellency's Government to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.