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和平集会自由和结社自由权利问题特别报告员关于访问大韩民国的报告*

秘书处的说明

秘书处谨向人权理事会转交和平集会和结社自由权利问题特别报告员马伊纳·吉埃关于应大韩民国政府邀请，于 2016 年 1 月 20 日至 29 日访问该国的情况报告。访问的目的是评估该国与和平集会和结社自由权利相关的情况。

* 本报告逾期提交，以反映最新动态。

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea**

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** Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 24/5, the Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the Republic of Korea from 20 to 29 January 2016, at the invitation of the Government. The purpose of the visit was to assess the situation of the rights to freedom of peaceful assembly and of association in the country.

2. The Special Rapporteur met with representatives of the executive, legislative and judicial branches of government in Seoul and Sejong and local authorities in Pohang. He also met with representatives of the National Human Rights Commission, representatives of international organizations, the diplomatic community and civil society organizations, and the families of the victims of the Sewol ferry tragedy in Ansan. He would particularly like to thank the Government for facilitating his visit to Han Sang-gyun (leader of the Korean Confederation of Trade Unions) at the Seoul Detention Centre.

3. The Special Rapporteur appreciates the cooperation of the Government in the preparation of and throughout the visit. The spirit of constructive dialogue that prevailed during all the meetings he held was commendable and particularly gratifying because it was his first visit to Asia. He further appreciates the efforts of the Government to provide him with a full and accurate picture of the laws and policies governing assembly and association rights in the Republic of Korea. He also recognizes the effort that was put into responding in detail to all his requests for information.

4. The Republic of Korea currently holds the presidency of the Human Rights Council, a position that the Special Rapporteur believes that the country will use to progressively advance the global human rights agenda. He recognizes the support that the Republic of Korea has provided to key resolutions on the rights to freedom of peaceful assembly and of association and encourages the State to strengthen its cooperation and constructive engagement at that level even further.

5. The Republic of Korea maintains a standing invitation to the special procedure mechanisms of the Council and has received several visits, including from the Special Rapporteurs on the situation of human rights defenders (see A/HRC/25/55/Add.1) and on the promotion and protection of the right to freedom of opinion and expression (see E/CN.4/1996/39/Add.1, and A/HRC/17/27/Add.2 and Corr.1). The present report builds on the relevant aspects of their findings.

6. The Special Rapporteur is grateful to the many representatives of diverse civil society groups, including youth, persons with disabilities, local communities, academia and professional associations, to name but a few, who made time to meet with him and provided articulate and detailed accounts of their experiences.

7. The Special Rapporteur expresses his gratitude to the Representative of the Office of the United Nations High Commissioner for Refugees in the Republic of Korea and his team for their kind support in relation to some logistical aspects of the visit.

II. Background and context

8. The Republic of Korea has a proud history of protests and demonstrations expressing opposition to past autocratic and corrupt leaders, galvanizing society, inducing societal change and hastening democratization. During the visit, a variety of interlocutors agreed that the energy behind the collective mobilization of citizens was instrumental in shifting the country from authoritarian rule to democracy.

9. The Republic of Korea emerged from the Korean War in the 1950s devastated and impoverished, but has made tremendous strides in developing practically every facet of national life. From a per capita income that compared with the poorer countries of Africa and Asia in the 1960s, the economy has grown rapidly and in 2004 the country joined the Organization for Economic Cooperation and Development. It ranked 17th out of 188 countries in the human development index in 2014, although that is somewhat compromised by the relatively high level of inequality in the distribution of human development across the country. It received close to the best rankings in an assessment of freedom and civil and political rights in 2015.[1] The Special Rapporteur commends the people and the Government of the Republic of Korea for those impressive achievements, of which they should rightly be proud.

10. Civil Society in the Republic of Korea is diverse, motivated, energetic and vocal on a broad range of issues affecting society. The tradition of people coming together peacefully and taking to the streets or halls of power to speak their minds and effect change is inspiring and worthy of emulation elsewhere. In the Special Rapporteur's view, such a vibrant civil society sector should continue to be encouraged and facilitated because it bodes well for the country's progress. The Government should look beyond the sometimes noisy and boisterous assemblies and focus on the expression of the needs and aspirations of the people as both a barometer of social tensions and a peaceful avenue for their release. Supressing opportunities for this mode of expression only opens up a less desirable avenue, one of violent resistance, an eventuality that would undermine everything that the country has achieved to date.

III. International legal framework

11. The Republic of Korea is party to nearly all key United Nations human rights instruments except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of all Persons from Enforced Disappearance.[2] The State maintains its reservation to article 22 of the International Covenant on Civil and Political Rights, by which it makes its compliance with the provision subject to local laws. In its general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, the Human Rights Committee stated that reservations should not "seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be identical, or to be accepted only insofar as they are identical, with existing provisions of domestic law." States are required to ensure that their domestic laws conform to the international standards they ratify, not the other way around.

12. Although it has been a member of the International Labour Organization (ILO) since 1991, the Republic of Korea has not ratified two key conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the the

[1] Freedom House ranks the Republic of Korea as free in its Freedom in the World index, available from https://freedomhouse.org/report/freedom-world/2015/south-korea.

[2] South Korea has yet to ratify several key optional protocols, including those to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the optional protocols on individual communications procedures to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Special Rapporteur notes that in accordance with the ILO Declaration on Fundamental Principles and Rights at Work (1998), despite not having ratified the above conventions, the Republic of Korea still has an obligation to respect, promote and realize in good faith the fundamental rights contained in those instruments.

13. The Special Rapporteur was gratified to hear from the Supreme Court that the judiciary takes a keen interest in the recommendations of international human rights bodies, regularly updating the court intranet in order to keep abreast of developments. He recalls the repeated references by authorities to decisions of the Constitutional and Supreme Court which articulate norms related to assembly and association. Those norms are cited as the basis for the actions of the authorities. As such, the Special Rapporteur encourages judges to increasingly make such references and align their decisions to international human rights standards, including on the rights to freedom of peaceful assembly and of association in their rulings and judgments, in order to provide appropriate guidance to the authorities.

14. The Special Rapporteur recalls that in principle, freedom to exercise a right is to be considered the rule and its restriction the exception. The primary responsibility of States is to ensure the enjoyment of that right rather than seek avenues for its restriction. Those same standards also form the critical basis for identifying good practices and lessons to be learned from other jurisdictions. In a situation where two or more rights converge, the perspective and approach by authorities should be to facilitate the exercise of all rights as far as possible, rather than privileging one set of rights over the others.

IV. Situation of the rights to freedom of peaceful assembly and of association

15. In article 21 of the Constitution the rights to freedom of peaceful assembly and of association are guaranteed. More importantly, the provision explicitly prohibits the licensing of assembly and association (art. 21 (2)). The rights of workers to association, collective bargaining and collective action are similarly protected in article 33 (1), with exceptions made for some public officials, as stipulated by law.

16. Article 37 of the Constitution provides that rights may only be restricted when necessary for national security, the maintenance of law and order, or for public welfare. Further, it states that restrictions may not infringe on any essential aspect of the freedom or right. The Special Rapporteur notes that any restrictions must strictly conform to international law.

17. Government interlocutors emphasized the precarious security situation because of the actions of the Democratic People's Republic of Korea. Indeed, its nuclear programme has been a source of concern and on several occasions the two countries, technically still at war, have exchanged heated words, interrupted joint activities and even engaged in military action. Successive administrations in the Republic of Korea have taken somewhat different approaches to dealing with their northern neighbour. The Special Rapporteur was informed that the current administration was concerned not just by the nuclear threat it posed, but also by the repression of the human rights of its population, issues which the Republic of Korea is committed to addressing through the United Nations framework.

18. The Special Rapporteur acknowledges that the Republic of Korea faces special challenges in view of the unsettled relationship with its northern neighbour. Nevertheless, even in those circumstances, human rights should not be sacrificed in the name of security concerns. The rights to freedom of peaceful assembly and of association must remain the rule and restrictions the exception (see A/HRC/20/27, para. 16). Limitations to those rights for reasons of national security must conform to the principles of proportionality and

necessity in a democratic society and be tailored to achieve the protective function – in this case to protect against a specific risk or threat to the nation's security, not just a general national interest or security concern. Those limitations must also consist of the least intrusive instrument to achieve the objective sought.[3]

A. Freedom of peaceful assembly

1. Notification and peaceful assemblies

19. In line with the Constitution, the Assemblies and Demonstrations Act prohibits the authorities from requiring that peaceful assemblies be previously authorized. It does, however, require assembly organizers to submit a report notifying the authorities of the details of the proposed assembly in advance (art. 6 (1)). Notification regimes for assemblies may be permitted under international law (see A/HRC/20/27 para. 28), but such regimes, regardless of how they are labelled, may become de facto authorization requirements if notification is mandatory, particularly when they leave no room for spontaneous assemblies, which are also protected by international human rights law. In addition, notification regimes should not be burdensome or unduly bureaucratic (see para. 26 below).

20. Article 1 of the Act aims to guarantee "the freedom of lawful assemblies and demonstrations and [protect] citizens from unlawful demonstrations". The notion of "lawfulness" was raised by many interlocutors. The Korean National Police Agency informed the Special Rapporteur that lawful assemblies are those that do not contravene the laws of the country, such as non-violent assemblies, and those that do not disrupt traffic. Assemblies that are not notified are unlawful, as are spontaneous assemblies. The police noted that a lawful assembly may turn into an unlawful assembly, for example when it is judged to have become violent. Assemblies deemed unlawful may be banned and/or forcefully dispersed, with participants facing possible investigation and prosecution.

21. Using national laws as the determinant for lawfulness in order to guarantee rights is problematic because it suggests that the right to peaceful assembly is granted by national law. Internationally recognized human rights are inherent lawful entitlements, requiring the authorities to take steps to respect and fulfil them. Their validity is not dependent on the discretion of lawmakers or of security agencies.

22. International human rights norms consider the "peacefulness" of an assembly as the defining characteristic for protection under article 21 of the International Covenant on Civil and Political Rights. The peacefulness of an assembly should be presumed and regard must be given to the intentions of the organizers and the manner in which the assembly is held (see A/HRC/31/66, para. 18). International law allows for dispersal of a peaceful assembly only in rare cases, i.e. when it incites discrimination, hostility or violence, in contravention of article 20 of the Covenant.

23. Further, designating an assembly as unlawful because of the violent actions of a few and subsequently dispersing it fails to take into account that the right to freedom of peaceful assembly belongs to individuals. The rights of peaceful participants cannot be restricted because others are violent (see A/HRC/31/66, para. 20). As has been acknowledged by the Constitutional Court of the Republic of Korea, dispersal of an assembly is a measure of last resort because of its severe impact on the rights of peaceful participants.[4]

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[3] See Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 14.

[4] Case on the prohibition of assembly in the vicinity of diplomatic institutions [15-2 (B) KCCR 41, 2000Hun-Ba67, etc. (consolidated), October 30, 2003] para. 3 (C) (3).

24. Even where assemblies are not peaceful, participants do not lose the protection of a number of other rights, such as, among others, the rights to freedom of expression, association and belief; participation in the conduct of public affairs; and bodily integrity (see A/HRC/31/66, paras. 8 and 9).

25. The Republic of Korea has a positive duty to facilitate the necessary conditions for the enjoyment of rights. That means that the authorities should afford greater scope for the holding of gatherings and avoid undue restrictions. The view that protests and demonstrations are a nuisance and should thus be approached from a solely law and order perspective is incompatible with the needs of a democratic society. The disruption of ordinary life is to be expected, especially when assemblies attract large crowds, and must be tolerated if the right is not to be deprived of substance (see A/HRC/31/66, para. 32).

2. Bans on assemblies

26. Article 8 (1) of the Assemblies and Demonstrations Act permits authorities to ban assemblies that do not comply with a list of requirements (arts. 5 (1), 10, 11 and 12). In practice, the use of those provisions affords broad discretion to the authorities to allow or restrict the holding of assemblies and, in effect, amounts to an "authorization" of assemblies as opposed to notification (see para. 19 above). Police reportedly exercise wide discretion in determining when to issue a ban on an assembly.

27. According to government statistics, the rate of issuing of ban notices is minimal. An average of 0.18 per cent of notified assemblies between 2011 and 2015 were banned, although other interlocutors claimed the figure was higher. The restraint in issuing ban notices is commendable, but does not address the concern that in principle, pre-emptive banning of assemblies infringes the exercise of the right to freedom of peaceful assembly and negates the obligations of the authorities to facilitate that right.

28. The reasons that police rely on to ban or find assemblies unlawful, such as obstruction of traffic, disturbance of the daily lives of citizens, high noise levels and later notification of a simultaneous assembly, do not meet the criteria set out in article 21 of the International Covenant on Civil and Political Rights to justify limitations on assemblies. Only restrictions which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and are lawful, necessary and proportionate to the aim pursued, may be applied (see A/HRC/31/66, para. 29). The wide discretion and powers to restrict assemblies have allegedly led to situations whereby, for example, press conferences held by college students around the issue of comfort women and also one organized by Kim Jung-soo protesting against fraud, were deemed unlawful assemblies because participants shouted slogans.

29. Article 8 (2) of the Assemblies and Demonstrations Act permits police authorities to ban the later notified assembly when two or more assemblies with conflicting objectives are to take place at the same time and place. That creates room for abuse, as illustrated by the banning of an assembly of lesbian, gay, bisexual, transgender and intersex persons in June 2015, because counter-demonstrators had lodged their notification earlier. It was alleged that the earlier notification was solely to prevent the gathering. The Special Rapporteur emphasizes that States have an obligation to protect and facilitate simultaneous assemblies, including counter-demonstrations.

30. Article 11 prohibits outdoor assemblies within a 100-meter radius of some key government and diplomatic locations, such as the presidential palace, the National Assembly building, courts and diplomatic offices. The Special Rapporteur maintains that blanket bans on the location of peaceful assemblies intrinsically constitute disproportionate restrictions (see A/HRC/23/39, para. 63). Imposing bans on the time or location of

assemblies as the rule and then allowing exceptions inverts the relationship between freedom and restrictions; it turns the right into a privilege (see A/HRC/31/66, para. 21). Such bans also interfere with the ability to carry out assemblies within sight and sound of the intended audience.

3. Management of assemblies

31. The Special Rapporteur heard many testimonies and watched extensive publicly available video footage showing the use of water cannon and bus barricades by police at various protests. He was informed by the National Police Agency that police stopped using tear gas for protest management in 1999 and that since then violent incidents during assemblies have decreased. The Special Rapporteur believes that, following the same logic, the use of water cannon (sometimes with capsaicin mixed into the water, which has similar effects to tear gas) and bus barricades triggers increased tensions. The way in which such tactics are used, coupled with massive deployment of force, is almost guaranteed to increase tension between police and protestors, who interpret such actions as unprovoked attacks. That kind of aggression begets more aggression.

32. Interlocutors from the Agency explained that the water cannon are used as a last resort to disperse crowds where there is violence. Moreover, warnings are issued before their use, so that participants can disperse voluntarily. There are also strict guidelines governing their use.

33. Nonetheless, there remain serious problems with the use of water cannon, some of which the police acknowledged. First, the tactic is indiscriminate. It is difficult to use water cannon to isolate violent individuals in a mixed crowd. In footage made available to the Special Rapporteur, water cannon were used against largely peaceful crowds. In certain cases, lone individuals were targeted, a use difficult to justify. Victims also testified to the personal injuries and damages to property sustained owing to their use. The case of Baek Nam-gi is a tragic illustration of this. Mr Baek, a participant in the “peoples’ rally” in November 2015, was knocked to the ground by a water cannon, resulting in serious injuries, and remains in a coma at the time of writing. The police explained that the water cannon operator relies on a monitor with a relatively small screen inside the vehicle, limiting the detail visible to the operator. That increases the chances that the water cannon will cause severe injury to protestors. Several interlocutors also testified that warnings about the impending use of the water cannon are difficult to hear because of the noise accompanying protests and demonstrations.

34. The use of water cannon was challenged in the Constitutional Court,[5] but unfortunately the Court majority did not take the opportunity to determine whether their use infringed the complainants’ rights. However, three dissenting judges found that the complainants’ rights had been violated because of the lack of standards on the use of water cannon and their direct use on the applicants without adequate justification. The Special Rapporteur regrets that the Court missed an opportunity to clarify standards for the use of water cannon.

35. The use of bus barricades is a serious concern for participants in demonstrations and protests. The video footage and photographs seen by the Special Rapporteur show an impressive line-up of hundreds of buses, parked bumper to bumper completely blocking off access to streets, especially those that lead to Gwangwhamun Square and the presidential palace. In addition to forming a significant physical obstacle in the path of protestors, the

[5] Case on the constitutionality of using water cannon [26-1(B) KCCR 588, 2011Hun-Ma815, June 26, 2014].

rows of buses prevent participants from approaching their intended destination and interfere with participants' ability to assemble within sight and sound of their intended audience. The barricades are also used to isolate assembly participants from each other and the public, such as during the Sewol ferry protests.

36. The Police Agency explained that bus barricades are used in cases where there is a high risk of physical clashes between the police and demonstrators. It is not clear how the risk is assessed and there is no proof that blocking off protest routes de-escalates tensions rather than increasing them.

37. The Special Rapporteur is unconvinced that the use of bus barricades meets the necessity and proportionality requirements under article 21 of the International Covenant on Civil and Political Rights. Bus barricades are antithetical to the obligation of the authorities to facilitate assemblies. They are not used reactively to manage the conduct of participants, but rather pre-emptively to interfere with the right to freedom of peaceful assembly. That illustrates a prior intention to restrict the free flow of assemblies.

38. Further, the Special Rapporteur wishes to stress that policing assemblies is a demanding task that requires the utmost experience, training and skill. The use of relatively inexperienced, conscripted youth on the front lines of any protests is therefore ill-conceived and potentially dangerous to participants, police and the public. A central tenet of the State obligation to facilitate and respect the rights to peaceful assembly is to ensure that those involved in protecting the exercise of those rights both understand and execute their role in accordance with international human rights standards.

4. Investigation and penalization

39. The Special Rapporteur learned of numerous actions by authorities in the aftermath of gatherings that create a chilling effect on the exercise of the rights to peaceful assembly. They included investigations and arrests of large numbers of participants, the indictment of hundreds of participants for the criminal offence of general obstruction of traffic, prosecution of assembly organizers for allegedly inciting violence and civil suits pursued against them for compensation and damages. Organizers can also be held liable for damages caused by the unlawful behaviour of others. That places an onerous and unreasonable responsibility on organizers (see A/HRC/31/66, para. 26).

40. The case of Park Lae-goon exemplifies the intimidation and harassment that the organizers of peaceful protests face. Park is a member of Coalition 4.16, which consists of families and supporters of the victims of the Sewol ferry disaster. He was indicted on charges of organizing an unlawful protest, the destruction of public goods, general obstruction of traffic and defamation, among others. On 22 January 2016, the Seoul Central District Court sentenced Mr. Park to three years' imprisonment with four years' probation and 160 hours of community service. He has appealed the decision.

41. Following the "peoples' rally" co-organized by the Korean Confederation of Trade Unions in November 2015, police reportedly began investigations of hundreds of Confederation members, some of whom have been charged. The president of the Confederation, Han Sang-gyun, was charged with offences related to the obstruction of public duty, injury to public officials, the destruction of public goods, and obstruction of traffic among others. He is currently undergoing trial.

42. Charging assembly participants with certain criminal offences, such as the general obstruction of traffic, de facto criminalizes the right to peaceful assembly. Where large numbers of participants turn out, it is virtually impossible to keep roads entirely clear, but if individuals spill over onto the roads they may be charged with obstructing the traffic. The choice to prosecute at all, and even more to charge participants with the serious offence of general obstruction of traffic, conveys a desire by the authorities to discourage assemblies

on roads. The Special Rapporteur reiterates that assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic (see A/HRC/20/27, para. 41).

43. Finally, redress for victims of excessive use of force by police is virtually impossible, because of the difficulty of identifying individual police officers. Police typically wear name tags on regular uniforms, but riot protection gear and outer jackets do not bear similar identification. The police expressed concerns about the privacy and security of officers' personal information were it to be displayed on name tags on protective uniforms. The Special Rapporteur emphasizes that those concerns cannot be used to prevent the identification, and thus accountability, of officers managing assemblies. He notes that police officers in regular police uniforms wear name tags without similar privacy concerns. The police initially informed the Special Rapporteur that this would be corrected in the near future but they subsequently indicated that the issue was under careful consideration. He urges the National Police Agency to correct this anomaly soon.

5. Groups in situation of vulnerability

44. The Special Rapporteur welcomes the diversity in participants, including women, youth, lesbian, gay, bisexual, transgender and intersex persons and persons with disabilities, at general protests and demonstrations. He was gratified that he received no complaints of sexual violence during such gatherings. Even so, he took note of the challenges that youth and persons with disabilities face in exercising their rights to peaceful assembly. Persons with disabilities are impeded from participating in assemblies by police immobilizing or obstructing their assistive devices and sometimes physically removing them from assemblies against their will. School regulations and the view that young people and students are at risk of manipulation by adults prevent them from participating in assemblies.

45. The Special Rapporteur urges the authorities to exercise great caution when interacting with disabled persons and their assistive devices, which are integral to their lives. Young persons are equally entitled to exercise their rights to freedom of peaceful assembly. As such, intimidation and punishment, including by school authorities, of minors and young people who express their views through organizing or participating in peaceful protests, such as the one related to history books, should be prohibited and sanctioned. Similarly, lesbian, gay, bisexual, transgender and intersex persons should not feel intimidated by counter-demonstrators from taking part in protests. Counter-demonstrations, while allowed to take place, should not dissuade participants of other assemblies from exercising their right to freedom of peaceful assembly (see A/HRC/20/27, para. 30). The police should play an active role in that regard.

6. Media and monitors

46. The media and assembly monitors play a crucial role in providing independent and objective information on the conduct and management of assemblies. The Special Rapporteur received complaints that journalists and observers feel targeted. Some monitors, such as Ki Sun, were indicted for participating in an unlawful protest. Others, such as Kim Young-guk said they were targeted by water cannon. When the authorities facilitate and manage assemblies, the instrumental role of journalists and observers must be recognized and taken into account.

B. Freedom of association

1. Associations

47. Individuals in the Republic of Korea may choose to associate under a variety of forms, including non-profit voluntary organizations, non-profit private organizations, corporations and foundations. It is relatively easy to establish an association. However,

acquiring certain competencies – for example legal personality and the ability to raise funds from the public – requires the approval of and supervision by the authorities.

48. Article 32 of the Civil Act provides that associations and foundations that wish to acquire juridical personality must receive permission from the competent authorities. The same act provides that legal personality may be cancelled when operations are outside the scope of the purpose of the organization, or when they violate conditions attached to the permission. The requirement to seek and receive permission is inherently problematic to the free exercise of the right to freedom of association, as it severely limits the ability of associations to operate in the way they deem best. Further, vesting discretion to grant legal personality in the authorities creates opportunities to deny unpopular groups that competence. The Special Rapporteur considers that a procedure whereby associations automatically gain legal personality upon establishment of the entity alleviates those problems and is as such most appropriate.

49. Even more troubling is that government departments can altogether avoid the responsibility of considering applications for legal personality if they believe the area of work of an organization does not fall within their competence. For example, the Beyond the Rainbow Foundation, a lesbian, gay, bisexual, transgender and intersex association, was denied legal personality by the Ministry of Justice, ostensibly because the group works on a narrow issue of sexual minorities, whereas the Ministry claimed that it can only register groups who work on broader "general human rights" themes. The association 4.16 Sewol Families for Truth and a Safer Society faced a similar rejection of its application by the Ministry of Maritime Affairs and Fisheries, which claimed that the proposed activities of the group, such as truth-finding, had already been carried out by government agencies.

50. Both non-profit associations and their donors are eligible for tax exemptions, which the Special Rapporteur finds commendable. However, article 4 of the Act on Collections and Use of Donations requires prior registration of fundraisers for all amounts over 10 million won (approximately $8,340) and submission of a detailed collection and expenditure plan. Fundraisers are required to state their target amount prior to raising the funds. That requirement is problematic because, while one may specify a target amount for collection, there are no guarantees that collections will not fall below or exceed the amount. Raising amounts over 10 million won without prior registration contravenes the Act and is punishable. Indeed, the authorities have reportedly rejected applications for registration under the Act, such as for the Gangjeong Village and the Miryang Power Towers Opposition Committee. In the case of Gangjeong Village, the Jeju province authorities declined to register the association because it considered that the donations would support activities opposing government policy.

51. The Special Rapporteur acknowledges the necessity for transparency and accountability in the fundraising and spending of associations, but notes that the key stakeholders in that respect are the beneficiaries and funders, not the Government. Facilitating such transparency should not be overly burdensome or intrusive, nor should it provide an occasion for the Government to supervise and restrict the operations of such organizations.

52. An overarching concern for the Special Rapporteur was the lack of robust institutional engagement of the Government with civil society. He was informed that representatives of the Office for Government Policy Coordination meet with the private sector four times a year and that is consistent with the overall approach of the Government to incentivising economic growth and development. The Prime Minister's Advisory Committee for Civil Society Development, which is the consultative body for issues concerning civil society, was not spoken of by civil society interlocutors – a sign perhaps of its lack of impact in achieving its role of engaging civil society participation in governance. The Special Rapporteur encourages the Government to see the connection between

providing space for free, democratic engagement and economic growth. A good environment for civil society guarantees, almost without exception, a good business environment. Fostering a robust, vocal and critical civil society not only improves the health of democracy, it also furthers the economic goals of the Government (see A/70/266, para. 18).

2. Labour unions

53. The Special Rapporteur was informed at length about the serious challenges facing workers in the Republic of Korea. Key concerns included limitations placed on certain categories of individuals and workers on forming and joining unions, difficulties in organizing collective action and actions taken by employers to weaken or destroy independent unions.

Legal framework

54. Article 33 of the Constitution provides for the right to collective action, but limits those rights for public officials and defence industry workers. That position differs notably from article 22 of the International Covenant on Civil and Political Rights and article 8 of the International Covenant on Economic Social and Cultural Rights, which recognize only that lawful restrictions may be made to the rights of members of the armed forces and police or the State administration.

55. The rights of teachers and public officials to freedom of association are regulated by the Act on the Establishment, Operation etc. of Trade Unions for Teachers and the Act on the Establishment, Operation etc. of Public Officials' Trade Unions, respectively. However, not all categories of teachers or public officials are able to exercise their association rights. In April 2015, the Ministry of Employment and Labour reportedly declined to recognize the Korean Professors Union because the Act does not recognize university lecturers as eligible to form and join trade unions.

56. Both pieces of legislation explicitly prohibit teachers' trade unions (articles 3 and 8) and public officials (articles 4 and 11) from engaging in any kind of political activity or industrial action, respectively. The prohibition of teachers' unions from engaging in political activity has been upheld by the Constitutional Court as justifiable. The Special Rapporteur is concerned that this prohibition, based on a largely vague notion of "political activity", imposes broad constraints on the ability of those categories of individuals to express themselves on a wide range of issues under the guise of maintaining "political neutrality".

57. The Trade Union and Labour Relations Adjustment Act states that non-workers may not be part of a union and dismissed workers, in respect of whom the National Labour Relations Commission has made a review decision, are also prohibited from trade union membership under other provisions of the law. Since 1997, the ILO Committee on Freedom of Association has extensively considered the restrictions imposed on the union membership of dismissed workers in the Republic of Korea. The Special Rapporteur endorses fully the recommendations of the Committee that the Government should take the necessary measures to amend or repeal legal provisions that prohibit dismissed workers from being union members as being contrary to the principles of freedom of association.[6]

[6] See report No. 371 of the Committee on Freedom of Association, March 2014, case No. 1865, para. 53.

58. The Committee considers that "depriving dismissed workers of the right to union membership is incompatible with the principles of freedom of association since it deprives the persons concerned of joining the organization of their choice".[7] The Special Rapporteur agrees with this position and considers the decertification of the Korean Teachers and Education Workers Union and the repeated denials of registration for the Korean Government Employees Union to be an unjustifiable interference in the right of those groups to freedom of association. In the case of the teachers union, approximately 60,000 teachers have been denied their right to freedom of association because of the inclusion of 9 dismissed teachers. In the case of the government employees union, 10,000 public employees are prevented from exercising their rights because the constitution of the union could potentially allow dismissed workers to be members. The denial of recognition on that basis does not meet the requirements that restrictive measures should be proportionate and the least intrusive instrument to achieve the desired result.

59. The plight of the two unions illustrates also the unfortunate implications of the de facto authorization procedure that underlies the recognition of trade unions. The certification process, based solely on the issuance of a certificate by the Ministry of Employment and Labour, creates opportunities for the arbitrary exercise of discretion by public officials. Requiring prior permission inherently constrains the right to freedom of association.

60. Certain categories of workers, including the self-employed, those whose remuneration is based on performance rather than an employment contract and those who are paid by clients rather than their employer, are considered to be engaged in "special forms of work" or in "disguised employment" relationships. Associations formed by those workers are not recognized as trade unions as defined by the Trade Union and Labour Relations Adjustment Act. As such, any agreements made by those associations do not carry the binding force accorded to union collective bargaining agreements and employers may refuse to adhere to such agreements. For example, the Special Rapporteur was informed of members of the Korean Public Service and Transport Workers' Union, Cargo Truckers Solidarity Division, whose employer, Pulmuone, refuses to recognize their agreements as binding. Similarly, employers have contested the recognition of the Korean Construction Workers Union for allegedly including in its membership independent contractors. In today's dynamic and ever-changing economic environment, falling back on pedantic and dated interpretations of what constitutes "employment" constitutes a failure of imagination – both in terms of protecting workers' rights and in forging the economy of the future.

61. The Special Rapporteur reiterates the position of the Committee on Freedom of Association that the right to freedom of association, including the right to form or join trade unions is guaranteed to all workers regardless of their occupation.[8] It is not the role of Government to determine who can join trade unions.

Interference with the independence and operations of unions

62. The plurality of trade unions at the enterprise level is a commendable reform by the Republic of Korea and in conformity with international human rights and labour standards. More needs to be done, however, to ensure that all unions are independent, voluntary and equally able to represent the interests of their members.

[7] Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, fifth (revised) edition (2006), para. 268.

[8] Ibid., paras. 216 and 217.

63. The Special Rapporteur had occasion to meet with members of the Korean Metalworkers Union Valeo Local who have been engaged in a protracted struggle with Valeo Electrical Systems Korea. The local management of the company declined to meet the Special Rapporteur during his visit. However, it did send high-level representatives to meet him in May 2016.

64. According to the interlocutors who briefed the Special Rapporteur, in 2009 through a number of actions the company began to contravene a collective bargaining agreement in place at the time. The union decided to engage in strike action in February 2010. The company responded with a lockout of union members and prevented officials from accessing their union office on the company's premises. By June 2010, a new union, unaffiliated to Valeo Local, had been established. The creation of that union was allegedly a result of undue pressure on employees to leave the Valeo Local union. It was also claimed that in the course of those events, between March and May 2010, the company engaged a labour relations consulting firm, which allegedly provided advice on how to weaken the independent trade union.

65. The Valeo Local union challenged the establishment of the new union and its unaffiliated status in court. The Seoul District Court nullified the assembly that formed the union, a decision upheld by the Seoul High Court. On appeal by the newly established union, the Supreme Court reversed the decision of the High Court. It held that a branch of an industrial union should be able to change its organizational form if it carried out activities as an independent organization with independent regulations and an executive body, even if it was not necessarily incorporated or able to engage in collective bargaining.

66. The Special Rapporteur is particularly struck by the events that led up to the formation of the new union, in particular, the strike action by Valeo Local, the concerns of workers about losing their jobs and, as the Valeo Local representatives stated, management support for the formation of the new union and their case in the Supreme Court. He is concerned that the Supreme Court decision may be used by employers to interfere with union independence by encouraging the formation of management-supported unions.

67. Labour groups have also accused the Samsung Group of having a "no union" management policy. They allege that Samsung repeatedly undermines employee unions through various means, including surveillance, threats and undue pressure on members, disguised subcontracting to avoid certain employer responsibilities and dismissal of members, among other tactics. In a meeting with the Special Rapporteur, Samsung officials denied those claims, stating that the choice to establish and join unions was solely that of employees. The Special Rapporteur cannot confirm or refute any of the claims against or for Samsung. He believes, nevertheless, that given the size, standing and reputation of Samsung in the country, the corporation could take a leadership role in promoting the right to freedom of association for employees and at the same time project a positive image as a corporation that cares about human rights. The Special Rapporteur notes similar complaints of attempts by Munwha Broadcasting Corporation to weaken unions by firing union leaders and workers following strike action and assigning union leaders demeaning jobs to demoralize them.

68. Article 8 of the International Covenant on Economic Social and Cultural Rights requires States to ensure the right of everyone to form and join trade unions of their choice. That implies a positive obligation to take measures. As such, the Special Rapporteur stresses that the Government should not, as the Ministry of Labour has done, adopt a neutral stance in relation to the formation and operation of trade unions. Any measures adopted should, however, ensure the independence and autonomy of trade unions.

69. Employers allegedly use labour relations consultancy firms to obtain advice that facilitates the erosion of trade union rights. The firm Changjo Consulting was alleged to

have played a central role in the events that led to the weakening of the Valeo Local union and the establishment of the Valeo Electrical Systems Union. The firm was also involved in similar activities leading to the weakening of the Korean Metal Workers Union at Yooseong Piston Ring, Deajeon-Chungnam Regional Branch. A parliamentary investigation and public hearing in 2012 recommended that the Ministry of Labour investigate the activities of labour relations consulting companies, including Changjo Consulting. The Government subsequently revoked and cancelled the licence of Changjo Consulting for the provision of labour relations services and the licence of the labour attorney concerned, and instituted criminal proceedings against Changjo Consulting. The Korean Metal Workers Union has instituted cases in court against the firm in relation to its role in promoting unfair labour practices.

The right to strike

70. Although the Trade Union and Labour Relations Adjustment Act provides for collective action, including strikes, in practice the ability to exercise that right is severely constrained. As previously mentioned, teachers unions and public officials are prohibited from engaging in industrial action. In addition, actions that stop, discontinue or obstruct the proper maintenance and operation of "minimum services" are not considered legitimate (article 42-2 of the Act). "Minimum services" in the law are subject to determination by agreement of the parties, or alternatively by the Labour Relations Committee.

71. By contrast, ILO recognizes that workers providing "essential services", defined as "only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population", may be prohibited from engaging in strike action. That is a restricted category of workers. However, according to ILO, States may prescribe a level of "minimum services" in relation to public utilities that should be maintained in case of a strike.[9] The Act falls short of those standards by banning outright a potentially discretionary range of services that may not constitute "essential services" as strictly defined by ILO.

72. Participating in strikes deemed to be illegal may result in criminal and/or civil liability against organizers and participants. The de facto discretion and power given to the authorities to declare a strike legal or illegal is problematic, as it typically belongs to a judicial authority to exercise such oversight. Regardless of the peaceful nature of a strike, employers can sue unions and their members for substantial damages arising from allegedly illegal strikes. Together with the provisional seizure of union assets and union members' salaries and wages, that effectively results in a chilling of trade union activity and a weakening of the unions. For example, in 2013-2014, the Korean Railway Workers Union went on strike. Of the seven union leaders who were arrested, four were indicted for "obstruction of business" (article 314 of the Criminal Act) but acquitted. Nevertheless, Korean Railways has sued the union for damages of 16.2 billion won.

73. Industrial action, particularly strike action, is by its nature designed to interrupt the normal operations of a business or employer in order to press for certain interests; it is inherently disruptive. Strikes should thus be adopted with a great deal of circumspection, but that does not mean they can be arbitrarily suppressed. Criminal and civil liability for loss of revenue or other damages arising from work stoppages negates the very core of the right to strike.

[9] ILO, "*General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949* (Geneva, 1994), para. 161. ILO defines a "minimum service" as one "which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear".

3. Political parties and associations pursuing political objectives

74. The political scene in the Republic of Korea has recently been dominated by the ruling Saenuri party, which held a majority in the National Assembly at the time of the Special Rapporteur's visit. Parliamentary elections held in April 2016 saw the party lose its majority to the opposition Minjoo party. Despite this dynamic shift in the parliamentary scene, entry into the political arena is tightly controlled. Political party formation is difficult and groups expressing critical views of government policies, such as those relating to reunification with the Democratic People's Republic of Korea or capitalism, find their freedom to express those views or organize and associate around them curtailed.

75. The Political Parties Act specifies onerous requirements in order to establish a political party. According to article 3 of the Act, a political party consists of a central party located in the capital and city or *Do* parties located in the metropolitan cities and *Do* (provinces). A political party must have at least five city/*Do* parties, each with at least 1,000 members. Articles 5 and 6 require that a preparatory committee, composed of at least 200 people in the case of the central party and 100 people for city and *Do* parties, organize the formation of the party. The preparatory committee has six months to fulfil all requirements to form the party. A registered party that does not maintain the requirements can have its registration revoked if it fails to correct those shortcomings within a given period (arts. 35 and 44). Currently, political parties rely on members for their funds, although the Special Rapporteur was informed that from 2017, non-members will be allowed to contribute to parties. Further, in order to run for elections, candidates need to pay a deposit which is non-refundable if he or she does not receive more than 10 per cent of the total valid votes. Availability of funds therefore determines the number of candidates that a party can offer for election.

76. It is understandable that some of these requirements are directed at ensuring that parties have a national outlook, diversity in party membership and a strong link between the party and its membership base. However, the effect is to make it difficult to establish new, smaller and localized parties, contrary to the stated objective of the National Election Commission of encouraging the establishment of political parties. The Special Rapporteur has noted previously that a minimum number of individuals may be required to establish a political party, but that number should not be set at a level that would discourage people from engaging in associations (see A/68/299, para. 31). The requirement to have a central party in the capital city and five city/*Do* parties is difficult to justify for individuals who want to engage in local politics. In addition, fixing a high number of founding members does not take into account a number of variables, such as the membership strength of dominant parties, the population of different cities and the resources available to smaller parties, all of which may prevent fledgling parties from increasing their membership numbers. Those requirements favour existing parties and close the space for new parties.

77. The Special Rapporteur spoke with members of associations that are in favour of reunification with the Democratic People's Republic of Korea, but are critical of the reunification policy of the Republic of Korea. He also met with groups that advocate socialism as an alternative to the capitalist economic policy of the Republic of Korea. Those groups spoke of suppression of their views and repression that includes surveillance, confiscation of written material, arrests, imprisonment and stigmatization as being "pro-enemy". He was informed that article 7 of the National Security Act, which prohibits praising, inciting or propagating the activities of anti-State organizations, acts of instigating or propagating a rebellion against the State, or joining organizations that engage in those acts, was used as a basis to prosecute members of such organizations.

78. The Government emphasized that the Constitutional Court had declared the provision as constitutional, judging the law to be clear as to what acts would be prohibited and to have a legitimate purpose. Further, the Government stated that the provision was applied judiciously and the chances for arbitrary application were minimal.

79. That reasoning does not alleviate the Special Rapporteur's concern that the provision can be used to stifle political plurality and peaceful dissent. He is not convinced that the terms used in article 7 of the National Security Act are as clear as the Constitutional Court pronounced them to be, or that they cannot be interpreted broadly to target dissent. The Act has been used by different regimes to silence critics, despite the capacity of the State to determine who is actually engaged in treason. Maintaining that provision of the law leaves open the possibility of its use in a repressive manner again. He fully endorses the views of the Special Rapporteur on the situation of human rights defenders (see A/HRC/25/55/Add.1, para. 32), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (see A/HRC/17/27/Add.2, paras. 65-71) and the Human Rights Committee (CCPR/C/KOR/CO/4, paras. 48-49) on the issue.

80. The dissolution of the Unified Progressive Party was a severe measure taken in 2014 by the Government and the courts that has had profound effects on the rights of association, expression and participation in public life. The members of parliament from the party were stripped of their seats following its dissolution. The Special Rapporteur is concerned that the decision by the Constitutional Court was taken amidst disquieting circumstances. The status of the party as an outspoken critic of the Government, the controversy surrounding the evidence relied upon by the Government in its dissolution petition and the impact of dissolution on the association rights of numerous party members who were not directly implicated in any wrongdoing, encourages perceptions that the objective was to silence the political challenge that the party posed. The Government prohibition of protests following the court decision only increases those concerns.

81. The Special Rapporteur urges careful consideration of the implications of dissolving a political party for the rights to association, among other rights, and its potential impact of dialling back the democratic gains that the Republic of Korea has achieved. He believes that the strong democratic credentials that the country possesses can withstand minority expressions of support for the Democratic People's Republic of Korea without resorting to such drastic retaliatory actions — actions that undermine the much-needed efforts of the Republic of Korea to find a peaceful solution to the instability of the peninsula.

V. Sewol ferry disaster

82. The sinking of the Sewol ferry that took place on 16 April 2014, in which over 300 people – mostly secondary school students – died is the most tragic event in the country in the recent past. The Special Rapporteur was deeply honoured to visit the memorial for the victims in Ansan and to meet some of the victims' families. He was particularly impressed by their courage and commitment, not just to establish the truth surrounding the accident, but also to ensure that a similar tragedy does not recur.

83. The Special Rapporteur clearly understood that the victims' families were largely dissatisfied with the Government response to the tragedy. Although the Government has made efforts to investigate the accident, hold some of those involved accountable and provide compensation to the families, some of those most affected feel that their calls for an independent inquiry into the tragedy have been ignored. That dissatisfaction is at the heart of the many protests and commemorative assemblies that have been held. In the Special Rapporteur's view, expressing such sentiments, no matter how unpopular, is exactly the purpose for which peaceful assembly rights should be facilitated and open communication

channels maintained. Preventing or obstructing people from expressing their grief and anger in reaction to such a tremendous loss creates opportunities for such sentiments to grow into something more insidious and potentially violent.

84. The Special Rapporteur was alarmed at the apparent politicization of the Sewol ferry disaster. The yellow ribbon adopted by the victims' families as illustrative and supportive of their cause, appears now to be interpreted as an anti-Government symbol. Equating demands for accountability and transparency, the hallmarks of the rule of law, with attempts to undermine the Government per se, has no place in a democratic society. In his view, the Government handling of the protests around the Sewol ferry disaster is emblematic of an approach that seeks to stifle expressions of dissatisfaction, leading to polarization over an issue that should otherwise encourage solidarity and collaboration to address perceived shortcomings.

VI. National Human Rights Commission of Korea

85. The National Human Rights Commission of Korea was established in 2001 by the National Human Rights Commission Act and consists of 11 members selected or nominated by the President, the National Assembly and the Chief Justice of the Supreme Court. As the national human rights institution, it investigates complaints, issues policy recommendations and conducts education campaigns. The Commission is currently accredited with "A" status by the International Coordinating Committee of the National Institutions for the Promotion and Protection of Human Rights (known as the Global Alliance of National Human Rights Institutions since March 2016). The Committee deferred re-accreditation in 2015 over concerns that a clear, transparent and participatory selection and appointment process for commissioners was not included in relevant legislation and practice. Further, there were concerns that commissioners were not immune from legal liability for actions undertaken in good faith when acting in their official capacity.

86. Those issues were echoed by civil society interlocutors as contributing to their perception that the Commission was ineffective. In their view, under its previous leadership it was slow to react and reluctant to issue decisions or statements on urgent and politically sensitive cases of violations of human rights; lacked visibility when significant issues of human rights came to the fore; and failed to make timely decisions on complaints before it. For example, the Special Rapporteur was informed that 20 cases arising from the Sewol ferry disaster filed with the Commission after the tragedy in April 2014 had not been decided upon a year later. Five of the cases were subsequently dismissed but the complainants were not notified. Civil society was also dissatisfied with the relationship between the sector and the Commission and considered its operations inaccessible and not transparent.

87. On behalf of the Commission, the Chair acknowledged awareness of those concerns and stated that the Commission was making efforts to improve communication with stakeholders and to strengthen diversity and its legal framework. It has made 32 recommendations related to the rights to freedom of peaceful assembly: 16 have been accepted by the Government, 6 have received partial acceptance, 5 have not been accepted; and 2 are still under review. Unfortunately, the recommendations of the Commission are not binding. In relation to simultaneous assemblies, the Commission has called for the removal of legal provisions that allow the banning of the later notified assembly owing to abuse of that clause. It also found that article 12 of the Assemblies and Demonstrations Act, which allows the banning of assemblies that may interrupt the flow of traffic, was inappropriate.

88. The Special Rapporteur is encouraged by the expressed commitment of the Commission to earning the confidence of civil society as to its ability to protect and promote human rights. The role of an independent, effective and efficient national human rights institution in strengthening democracy cannot be overstated. Indeed the strongest indicator of the effectiveness and independence of a national human rights institution is the confidence that human rights defenders and civil society have in it. The principles of openness, accessibility, consultation and participation are also key tools which the Commission should embrace to improve its credibility with partners.

VII. Conclusions and recommendations

89. **The ability to exercise the rights to freedom of peaceful assembly and association provides an avenue through which members of society can express their views on a diverse range of issues, whether by turning out for demonstrations, engaging in strikes, joining associations or making donations to associations of their choice. The Special Rapporteur observed that while the Government is cognisant of the important role that assembly and association rights play, there is a tendency to tightly control expressions of dissent.**

90. **The Special Rapporteur found that government authorities clearly make efforts to observe the rule of law, which is commendable. Nevertheless, he is concerned at a series of inconsistencies and divergence from international human rights law standards of implementation of the law arising because:**

(a) **The legal framework does not comply with international human rights law standards in a number of key areas;**

(b) **The legal framework provides excessive discretion to the authorities;**

(c) **While exercising that discretion, the authorities do not pay sufficient attention to the obligations to respect, protect and facilitate assembly and association rights.**

91. **The Special Rapporteur stresses that the significant democratic gains achieved by the Republic of Korea cannot be taken for granted. The democratic project requires constant maintenance and strengthening. Internal and external challenges brought about by changing economic and geopolitical conditions should be addressed, not in isolation but as an integral part of the democratic function where agreement and dissent are equally welcomed.**

92. **The present report is offered in a spirit of constructive dialogue. The Special Rapporteur believes that the Republic of Korea is capable of providing leadership in the field of freedoms of peaceful assembly and of association. He remains at the disposal of the authorities in helping them to achieve those goals.**

93. **The Special Rapporteur makes the following recommendations.**

General recommendations

94. **The Special Rapporteur recommends that the Government:**

(a) **Recognize in law and in practice that the rights to freedom of peaceful assembly and of association are a legitimate means of expression regarding a diverse range of issues, including social and political issues, and that it is incumbent on the authorities to facilitate rather than to diminish the exercise of those rights;**

(b) **Ensure that the legal framework affecting those rights conforms to international human rights norms, including by providing an objective and detailed framework through which decisions restricting rights are made, while ensuring that restrictions are the exception and not the rule. Limitations to the rights must be in furtherance of a legitimate aim, prescribed by law, proportionate to the aim pursued and necessary in a democratic society;**

(c) **Ratify outstanding key international human rights and labour treaties and remove the reservation to article 22 of the International Covenant on Civil and Political Rights;**

(d) **Ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to effective remedies.**

Recommendations on the right to freedom of peaceful assembly

95. **The Special Rapporteur recommends that the Government:**

(a) **Amend the Assemblies and Demonstrations Act and implementation of the law to:**

(i) **Ensure that at most a prior notification and not a de facto authorization regime regulates the exercise of the right to peaceful assembly;**

(ii) **Prevent blanket bans on times when and locations where assemblies can be held;**

(iii) **Ensure that assemblies are presumed to be lawful in accordance with international human rights law standards;**

(b) **Review the tactics used for the management of assemblies, including the use of water cannon and bus barricades, to ensure that they are not applied indiscriminately or against peaceful protestors, that they do not result in an escalation of tension and are directed at facilitating rather than preventing the exercise of assembly rights;**

(c) **Provide adequately trained and experienced police officers to manage assemblies and refrain from deploying conscripted youth for that purpose;**

(d) **Ensure that assembly participants are not investigated or held criminally or civilly liable for taking part in gatherings and that the principle of individual liability for unlawful actions is upheld, including in respect of assembly organizers;**

(e) **Ensure that the rights of all categories of assembly participants, including persons with disabilities, youth, women, lesbian, gay, bisexual, transgender and intersex persons, monitors and the media are upheld during the management of assemblies.**

Recommendations on the right to freedom of association

96. **The Special Rapporteur recommends that the Government:**

(a) **Ensure that the establishment of associations, including trade unions and political parties:**

(i) **Is subject at most to a notification process;**

(ii) **Is simple, expeditious and non-onerous, with clear requirements, including as to the relevant responsible authority;**

(iii) **Results in the acquisition of legal personality;**

(iv) **Is not subject to overly intrusive and burdensome transparency and accountability requirements prior or subsequent to fundraising;**

(b) **Amend the labour laws to reflect the rights of all workers:**

(i) **To freedom of association, including the ability to form or join trade unions;**

(ii) **To freely engage in collective action, including strikes;**

(iii) **To enforce collective agreements in conformity with international labour law standards;**

(iv) **To freedom of expression, including opinions that may be considered political;**

(c) **Implement as a matter of urgency the recommendations issued by the Committee on Freedom of Association, including in relation to the recognition of the Korean Teachers and Education Workers Union and the Korean Government Employees Union;**

(d) **Ensure that the laws and policies guiding the establishment of political parties encourage the formation of small parties and ensure a level playing field in terms of funding.**

Other recommendations

97. **The Special Rapporteur recommends that the Government abrogate article 7 of the National Security Act.**

98. **The Special Rapporteur recommends that private sector companies, such as Samsung and Valeo Electrical Systems Korea, commit to upholding the rights to freedom of association for workers and subscribe to the United Nations Global Compact and operationalize the Guiding Principles on Business and Human Rights.**

99. **The Special Rapporteur recommends that the National Human Rights Commission of Korea work with the Government to:**

(a) **Implement the recommendations of the Global Alliance of National Human Rights Institutions and to earn the confidence of all stakeholders, including civil society;**

(b) **Implement recommendations related to the rights to freedom of peaceful assembly and of association.**

100. **The Special Rapporteur calls on civil society to:**

(a) **Continue its advocacy and monitoring work in relation to the enjoyment of the rights to freedom of peaceful assembly and of association;**

(b) **Follow up and monitor the implementation of the recommendations contained in the present report.**