



Assemblée générale

Distr. générale
23 décembre 2013
Français
Original: anglais

Conseil des droits de l'homme

Vingt-cinquième session

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Rapport de la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, Margaret Sekaggya

Additif

Mission en République de Corée*

Résumé

La Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme a effectué une visite officielle en République de Corée du 29 mai au 7 juin 2013, au cours de laquelle elle s'est entretenue avec des responsables du Gouvernement compétents, y compris le Premier Ministre, des représentants de l'institution nationale des droits de l'homme, des défenseurs des droits de l'homme et des représentants d'entreprises.

Dans le présent rapport, la Rapporteuse spéciale examine le cadre institutionnel et juridique de la promotion et de la protection des droits de l'homme en République de Corée et porte une attention particulière à l'exercice des libertés publiques et au rôle de l'institution nationale des droits de l'homme.

La Rapporteuse spéciale analyse ensuite les difficultés rencontrées dans le pays par certains groupes de défenseurs des droits de l'homme, notamment les journalistes et les professionnels des médias, les syndicalistes et les défenseurs des droits des travailleurs, les défenseurs des droits environnementaux, les défenseurs des droits des migrants, les défenseurs des droits des étudiants, ceux qui dénoncent des abus et les défenseurs des droits des personnes lesbiennes, gays, bisexuelles et transgenres. La Rapporteuse spéciale évoque également d'autres groupes de défenseurs qui font face à des difficultés particulières.

Le rapport s'achève sur des recommandations à l'intention de toutes les parties prenantes concernées.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.



Annexe

[Anglais seulement]

Report of the Special Rapporteur on the situation of human rights defenders on her mission to the Republic of Korea (29 May–7 June 2013)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. Background.....	6–9	3
III. Legal and institutional framework for promotion and protection of human rights	10–62	4
A. International level.....	10–13	4
B. National level	14–62	5
IV. Situation of human rights defenders	63–100	12
A. Journalists and media workers.....	65–68	13
B. Trade unionists and labour rights activists	69–74	13
C. Environmental rights defenders.....	75–82	14
D. Defenders working for the rights of migrants.....	83–86	16
E. Students' rights defenders	87–91	16
F. Whistle-blowers.....	92–95	17
G. Defenders working for the rights of lesbian, gay, bisexual and transgender people	96–97	18
H. Other defenders facing challenges.....	98–100	18
V. Conclusions and recommendations.....	101–110	19
A. Conclusions	101–106	19
B. Recommendations	107–110	19

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders conducted an official visit to the Republic of Korea from 29 May to 7 June 2013, at the invitation of the Government. The purpose of the visit was to assess the situation of human rights defenders in the Republic of Korea in the light of 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 (hereinafter, “the Declaration on Human Rights Defenders”). An examination of the legal framework in the country, institutional policies and mechanisms for the promotion and protection of human rights were of particular importance to this assessment.

2. During her visit, the Special Rapporteur met with the Prime Minister, Chung Hong-won, the Vice-Minister of Foreign Affairs and the Vice-Minister of Justice. She also met with officials from the Ministries of Foreign Affairs; Employment and Labour; Trade, Industry and Energy; National Defence; the Republic of Korea Navy; and the National Police Agency. Moreover, the Special Rapporteur met with members of the Legislative and Judiciary Committee and the Environment and Labour Committee within Parliament, as well as with the Supreme Prosecutor’s Office and the Supreme Court. She also had meetings with representatives of the Korea Communications Commission and the Korea Communications Standards Commission, and the Seoul Metropolitan Government, including one of the Human Rights Ombudspersons. The Special Rapporteur also met with the Chairperson, one of the Commissioners and a team from the National Human Rights Commission of Korea (NHRCK).

3. The Special Rapporteur also met with representatives of the Korean Electric Power Corporation (KEPCO) and the Hyundai Motor Company. She approached various other private companies for meetings but did not receive any other responses to her invitation. After the visit, she sent letters to these companies inviting them to submit information regarding general allegations and obtained a response from Samsung Electronics.

4. During her visit, the Special Rapporteur visited Seoul, Ulsan, Miryang, Jeju Island and Gwangju and met with the Mayors of Miryang and Gwangju, as well as with the Gwangju regional office of NHRCK. She also met with the Head of the United Nations Development Programme in the country, representatives of the Office of the United Nations High Commissioner for Refugees and members of the diplomatic corps. The Special Rapporteur also had meetings with a wide range of defenders and activists.

5. The Special Rapporteur thanks the Government of the Republic of Korea for extending an invitation to her and for its excellent cooperation throughout the visit. She would like to thank everyone who took the time to meet with her and shared their valuable experiences and insights, as well as those who helped organize the visit.

II. Background

6. This is the first visit of the mandate holder to the Republic of Korea, a country that has gone through significant and rapid changes over the past decades. The country has achieved impressive rates of economic growth and, at the same time, has established a democratic foundation after a long period of authoritarianism.

7. The Republic of Korea was proclaimed in August 1948 after the end of the Second World War, and peace agreements left the country divided from the Democratic Republic of Korea by drawing a line along the 38th parallel in the Korean peninsula. The country received United Nations-backed support after it was invaded by the latter two years later.

The Korean War ended in 1953 without a peace agreement, leaving the Republic of Korea technically at war with the Democratic People's Republic of Korea for more than fifty years.

8. After a long period of authoritarian regimes, the country went through a democratization process in the late 1980s. At this time, the political situation was marked by significant, large-scale and occasionally violent pro-democracy protests that opposed the country's long-standing authoritarian rule. As a result of these protests, the authoritarian establishment saw its position weakened, and this was seized on by opposition leaders demanding democratic reforms. In June 1987, the ruling party's presidential candidate proposed a far-reaching democratization plan that accepted all the opposition's key demands. The Constitution was put to a popular referendum, where it was approved, and was formally adopted on 29 October 1987.

9. Since then, the Republic of Korea has been a key player in the region. It is a member of the Organisation for Economic Co-operation and Development and of the Group of 20 (G-20). However, since the end of the Korean War in 1953, the strained relations with the Democratic People's Republic of Korea have played an important role in shaping the legal, political and institutional framework of the country. The Cheonan incident in 2010 and the nuclear test conducted by the Democratic People's Republic of Korea in early 2013 are examples of the latest tensions between the two neighbours.

III. Legal and institutional framework for the promotion and protection of human rights

A. International level

10. The Republic of Korea has a well-established legal, institutional and administrative framework and is a party to seven of the international human rights treaties and conventions. Article 6 of the Constitution provides for the incorporation of treaties and rules of international law. However, the following treaties have yet to be ratified: the International Convention on the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

11. Mindful of the fact that the ratification of international human rights treaties may require certain degree of harmonization of the domestic legal framework, the Special Rapporteur encouraged the Government during her visit to ratify the United Nations treaties to which it is not yet a party, in particular the International Convention on the Rights of All Migrant Workers and Members of Their Families.

12. The Republic of Korea is currently a member of the Council and was reviewed under the universal periodic review in October 2012. During the review, 70 recommendations were made, of which the Government accepted 42. The remaining 28 recommendations were not rejected, but the Government took note of them. Relevant recommendations which were not accepted included those encouraging the Government to ratify the International Convention on the Rights of All Migrant Workers and Members of Their Families; to establish mechanisms specifically to monitor the use of force by security

forces against peaceful protesters; and to amend or more clearly define provisions in the National Security Act.¹

13. In March 2008, the Republic of Korea extended an open invitation to the Council's special procedures. The country has received the visit of the Special Rapporteurs on the human rights of migrants (2006, A/HRC/4/24/Add.2) and on the promotion and protection of the right to freedom of opinion and expression (1995, E/CN.4/1996/39/Add.1, and 2010, A/HRC/17/27/Add.2 and Corr.1). The Special Rapporteur encourages the Government to implement the recommendations of the special procedures and use them to strengthen the legal, policy and administrative framework.

B. National level

14. In this section, the Special Rapporteur provides observations on domestic legislation deemed to have an impact on the situation of human rights defenders in the Republic of Korea.

1. The Constitution

15. The Constitution is a product of the country's democratization process in the late 1980s and based on six basic principles: the people's sovereignty; the separation of powers; the pursuit of peaceful and democratic unification of the Democratic People's Republic of Korea and the Republic of Korea; the pursuit of international peace and cooperation; the rule of law; and the State's responsibility to promote the welfare of its citizens.²

16. The Constitution provides for basic freedoms, including but not limited to: freedom of speech and the press, and of assembly and association (art. 21, para. 1); equality of all citizens before the law (art. 11, para. 1); the right to liberty of the person (art. 12, para. 1); the right to be free from torture (art. 12, para. 2); and freedom of religion (art. 20).

2. Laws related to freedom of opinion and expression

17. Freedom of expression is explicitly enshrined in article 21 of the Constitution, which does not allow any licensing or censorship of speech and the press. However, the Special Rapporteur points to serious challenges when it comes to guaranteeing the right in practice and recalls some of the recommendations made by the Special Rapporteur on the right to freedom of opinion and expression when he visited the country in 2010.

(a) Laws regarding defamation

18. The Special Rapporteur was concerned at the existence of an important limitation to freedom of expression contained in article 21, paragraph 4, of the Constitution, which states that: "Neither speech nor the press shall violate the honour or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honour or rights of other persons, claims may be made for the damage resulting therefrom."

19. According to this, defamation is a criminal offence, which carries heavy fines and prison sentences, and it is also provided for in the Civil Act, which establishes non-criminal sanctions to redress any damage to an individual's reputation or name.

¹ See the report of the Working Group on the Universal Periodic Review, A/HRC/22/10, and views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/22/10/Add.1.

² Information from the Korean Culture and Information Service, www.korea.net/Government/Constitution-and-Government/Constitution.

20. Chapter 33 of the Criminal Act provides for inter alia a prison sentence of up to five years if the person alleged “false facts” (art. 307). There is a clause which stipulates that, if the alleged facts are true and solely for the public interest, the act shall not be punishable (art. 310). Defamation through printed materials whereby facts are alleged with the intent to defame another individual can result in a prison sentence of up to three years or a fine of up to 7 million won (approx. 6,250 United States dollars) or, if the alleged fact is false, imprisonment of up to seven years, suspension of qualifications for up to 10 years or a maximum fine of 15 million won (approx. 13,450 US\$) (art. 309, para. 2).

21. The Special Rapporteur recalls the observations and recommendations made by Special Rapporteur on the right to freedom of opinion and expression (A/HRC/17/27/Add.2, paras. 21–28, and Corr.1) and calls for the removal of defamation as an offence from the Criminal Act. She is of the view that criminalization of defamation has a chilling effect and leads to self-censorship by human rights defenders, which amounts to a considerable constraint of the space in which to exercise the fundamental right to freedom of expression — a key right to claim other rights.

(b) *Freedom of expression online*

22. The situation of freedom of expression online is particularly pertinent in the Republic of Korea given its consistent rankings as one of the countries with the greatest number of Internet users, estimated in 2012 at some 84 per cent of the population.³ The country has a vibrant and multifaceted spectrum of bloggers, online journalists and others who post information on the Internet, some of whom work on human rights-related issues. However, as with traditional media outlets, the Special Rapporteur notes that tensions continue with regard to the censoring and control of content, and prosecution of those who publish materials online on sensitive topics or express dissenting views.

23. There are two main laws that relate specifically to the regulation of freedom of expression online, the Framework Act on Telecommunications, which aims to “promote public welfare through the effective management of telecommunications and promotion of their development” (art. 1); and the Act on Promotion of Information and Communication Network Utilization and Information Protection (“Network Act”), which aims to ensure that “information and communications networks are used in a sounder and safer way” (art. 1).

24. Regarding defamation online, in 2001 a new provision was introduced into the Network Act (art. 70) to complement article 309 of the Criminal Act. This provision stipulates that a person who defames another by disclosing a fact to the public via the Internet is punishable by imprisonment, with or without prison labour, for up to three years or by a fine of up to 20 million won (approx. 18,000 US\$). If the disclosed fact is proved to be false, the punishment is imprisonment with prison labour for up to seven years, suspension of qualification of up to ten years, or a fine of up to 50 million won (45,000 US\$). Under article 310 of the Criminal Act, if the published information is true and in the public interest, its publisher will not be punished.

25. The Special Rapporteur is seriously concerned about reports indicating that defamation suits are filed even when statements are true and made in the public interest. Such legal actions are reportedly used to target those who express dissenting views and criticism of public authorities, including human rights defenders.

26. The Network Act also contains various provisions regarding the regulation of online content that allow the alleged victim of defamation to request the deletion of the information or publish a rebuttable statement and, upon this request, the service providers

³ International Telecommunications Union, available from www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx.

to block access to content and take temporary discretionary measures. This matter was extensively dealt with by the Special Rapporteur on the right to freedom of opinion and expression (A/HRC/17/27/Add.2, paras. 38–42, and Corr.1), who made recommendations that the Special Rapporteur would like to underline. She is worried that these provisions could encourage self-censorship among defenders and contribute to an excessively cautious attitude on the part of online service providers. In this connection, she would like to recall some of the relevant provisions contained in the Declaration on Human Rights Defenders, namely articles 6 and 8, which deal with access to information and the right to discuss and advocate new human rights ideas.

27. During her visit, the Special Rapporteur raised concerns about the control of online expression and dissemination of information of public interest by defenders, particularly through the work of the Korea Communications Commission and Korea Communications Standards Commission, which are bodies operating under the Government. She met with the two institutions and expressed her concern that vaguely defined concepts, such as “harming the public interest” or “false communication”, are being used by a Government-controlled body to block Internet content and unduly restrict the exercise of a fundamental right and the use of a key tool, both of which are essential in the work of human rights defenders.⁴ The Special Rapporteur was discouraged by the fact that both institutions appeared unwilling to consider her observations in this regard during her meeting with them, and did not cooperate during the dialogue as was expected.

(c) *The National Security Act*

28. During her visit, the Special Rapporteur was concerned about certain aspects of the National Security Act which, despite the fact that it has been amended on several occasions, still appears seriously problematic for the exercise of freedom of expression and the work of human rights defenders.

29. Article 37, paragraph 2, of the Constitution establishes that: “The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order, or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.”

30. The purpose of the Act, as stated in article 1, paragraph 1, thereof, is “to secure the security of the State and the subsistence and freedom of nationals, by regulating any anticipated activities compromising the safety of the State”. Following an amendment passed by the National Assembly in 1991, a second paragraph was added to the article, stating explicitly that it “shall not be permitted to construe extensively this Act, or to restrict unreasonably the fundamental human rights of citizens guaranteed by the Constitution”.

31. The term “anti-government organizations” is defined by article 2, paragraph 1, of the Act as “a domestic or foreign organization or group which uses fraudulently the title of the Government or aims at a rebellion against the State, and which is provided with a command and leadership system”.

32. In the enforcement of the Act, article 7 has proved to be one of the most problematic clauses for human rights defenders. It punishes praise, incitement, propaganda, etc., by “anti-government organizations” with knowledge of the fact that “it may endanger the existence and security of the State or the democratic fundamental order” with a prison sentence of up to seven years. The vague language of article 7 in respect of “anti-government organizations” has led to the conviction of human rights defenders in connection with their work. The Human Rights Committee expressed concern about

⁴ See also A/HRC/17/27/Add.2, paras. 31–32, 47, and Corr.1.

prosecutions pursued under this article and restrictions placed on the freedom of expression. The Committee recommended that the State to ensure the compatibility of article 7 of the Act, and sentences imposed thereunder, with the requirements of the International Covenant on Civil and Political Rights, in particular article 19 (CCPR/C/KOR/CO/3, para. 18).

33. The extent to which the Act has been used to bring charges against human rights defenders and others has varied over recent decades, notably according to the particular administration in power. According to testimonies and reports received, during the period 2008–2012, the use of the Act appears to have increased, thereby counteracting a previous trend that had seen a general decline in charges based on the Act. The context of escalating tensions between the Republic of Korea and the Democratic People’s Republic of Korea during this period should, however, be noted, in particular the incident in 2010 when a warship, the Cheonan, was sunk after being hit by a torpedo believed to be fired by the latter’s navy, causing the death of the 46 sailors onboard.

34. During her visit, the Special Rapporteur received testimonies and reports that the Act has been used against defenders who have expressed criticism of Government policies and been labelled as “anti-government organizations”. They were considered a threat to the State and social order.

35. In connection with the warship incident, non-governmental human rights organization People’s Solidarity for Participatory Democracy (PSPD) submitted a report to the permanent delegations of the member States of the Security Council on 11 June 2010, and questioned the results of the official investigation into the sinking of the naval vessel Cheonan that had concluded the vessel had been sunk by a torpedo fired by the Democratic People’s Republic of Korea navy. After PSPD had sent its report, several high-ranking Government officials made comments suggesting PSPD was hindering government efforts to seek action against the Democratic People’s Republic of Korea through the Security Council. These comments are believed to have led to verbal and physical attacks targeting PSPD by members of the public, including threatening phone calls and the throwing of gas canisters and eggs at its building. An official investigation was later opened against PSPD on suspicions that it had violated the Act by assisting the Democratic People’s Republic of Korea, defamed members of the official investigation committee by spreading false information, and hindered government diplomatic efforts.

36. This case was the subject of a joint allegation letter sent by the Special Rapporteur and the Special Rapporteur on the right to freedom of opinion and expression on 1 July 2010. On 15 September 2010, the Government responded, denying that PSPD was being investigated for its cooperation with United Nations mechanisms, stating that the investigation was still in its preliminary stages and that the Prosecution Office had responded to a complaint launched by a different organization (A/HRC/16/44/Add.1, paras. 2009–2016). PSPD was eventually acquitted of charges spreading false information, obstruction of business and violation of the Act.

37. Mindful of the fact that national security is a real concern for the authorities and a valid ground for restrictions to certain public freedoms, during her visit the Special Rapporteur underlined that constructive criticism and scrutiny of public policies is essential in any democratic society, and should therefore be welcomed and guaranteed.

38. The Special Rapporteur would like to recall Council resolution 22/6, which calls on States to ensure that measures to preserve national security should be in compliance with their obligations under international law and should not hinder the work and safety of human rights defenders (para. 10). In this connection, she welcomed the assurances provided by the judiciary during her visit that the application of the Act is restricted only to cases of clear threats to national security. While this is encouraging, the Special Rapporteur remains concerned at the number of defenders charged under the Act.

3. Laws related to freedom of peaceful assembly

39. The fundamental right to freedom of peaceful assembly is guaranteed in the Constitution (art. 21), which explicitly prohibits any licensing of assemblies. However, the Special Rapporteur was worried to learn that the notification system guaranteed by the Constitution seems to have turned into a de facto regime of authorization by the police for peaceful assemblies organized by defenders, whereby public officials can impose a ban on planned demonstrations if they think the event might pose a threat to public peace and order. This practice contravenes article 21 of the Constitution and is contrary to the spirit of article 5 (a) of the Declaration on Human Rights Defenders. The Special Rapporteur would like to highlight the report on best practices by the Special Rapporteur on the rights to freedom of peaceful assembly and association, in which he recommends that the right to freedom of peaceful assembly be facilitated and protected by the State and not be subject to any regime of authorization, but at the most prior notification, which should not be burdensome (A/HRC/20/27, paras. 89–90; see also A/HRC/13/22/Add.1, paras. 1836–1844).

40. The Assembly and Demonstrations Act (2007) contains provisions that impose serious limitations on the organization of peaceful gatherings and carry heavy penalties if not complied with. Problematic provisions include articles 6, paragraph 1; 8 and 12. Article 6, paragraph 1, requires any person wishing to hold an outdoor assembly or demonstration to submit a report of the planned event to the local police station with details of the event. Article 8 provides that the police may ban the assembly or demonstration if it considers the event to constitute a threat to public peace and order. A violation of the ban is punishable by a maximum two years' imprisonment or a fine. Moreover, article 12 of the Act establishes that a demonstration can be banned or restricted if it disturbs traffic order (known as "obstruction of traffic"). The Act allows recourse through complaints or litigation as an appeal against the notice of ban from the police.

41. In addition, the exercise of the right to peaceful assembly has been restricted by the frequent use of article 314 of the Criminal Act on obstruction of business against protestors. Prosecutions under this provision are often accompanied by heavy claims for damages and seizures of property.

42. During her visit, the Special Rapporteur learned about various instances and situations where the fundamental right to peaceful assembly has been unduly restricted, including some instances where the police resorted to excessive use of force when handling protests. These affected people participating in peaceful candlelight vigils who were arrested; those opposing forced evictions who were violently dispersed; defenders and local residents protesting against large-scale development projects, who were treated violently and arrested; and foreign defenders wanting to join rallies in the Republic of Korea, who were denied entry into the country or deported.

43. The Yongsan incident is an emblematic case where six people, including a police officer, died as a result of a fire during a violent raid by the police to forcibly evict tenants from a building in January 2009. The incident was the subject of a communication sent by the Special Rapporteur and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention (A/HRC/16/44/Add.1, paras. 2003–2008). The situations in Miryang and Gangjeong village (Jeju Island) were also brought to the attention of the Special Rapporteur, and she visited both locations.

44. The Special Rapporteur received information and witnessed herself what seems to be a common practice by the police of parking a line of police buses just in front of rallies and protests in major cities. Mindful that these buses are used for mobilizing police units to oversee the demonstration, she notes this practice has the effect of "blocking" or hiding the demonstrations from the view of passers-by and can intimidate those who participate in the

rally or march. The Special Rapporteur would like to underline that the authorities should ensure the effective exercise of the right to peaceful assembly by meeting their positive obligation to protect and facilitate it within “sight and sound” of its object and target audience (A/HRC/20/27, para. 40). In addition to being an area for circulation, the use of urban space in a democratic society should allow for effective participation (ibid., para. 41). Assemblies can be a source of disruption of daily routines but authorities should try to balance the competing needs of the different users of public space rather than restricting the rights of those participating in public demonstrations.⁵

4. Laws related to freedom of association and labour rights

45. Freedom of association is enshrined in the Constitution (art. 21); however, article 33 places certain limitations to the right to form trade unions and engage in collective bargaining where public officials are concerned given the nature of their positions. Its core provision on the matter, article 33, paragraph 2, reads: “Only those public officials who are designated by law have the right to association, collective bargaining, and collective action.”

46. The Republic of Korea has been a member of the International Labour Organization (ILO) since 1991 but has not yet ratified two of its fundamental conventions relating to freedom of association, the Conventions Nos. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise and 98 (1951) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

47. During her visit, the Special Rapporteur expressed concern about what seem to be undue restrictions on and stigmatization of those trying to legitimately associate, participate in trade unions and exercise collective bargaining, all of which are basic human rights as well as key instruments to claim other rights.

48. The Trade Union and Labour Relations Adjustment Act (art. 5), sets out that “all workers have the right to freely form or join labour unions”, with the Labour Standards Act defining a worker as “a person who offers work to a business or workplace to earn wages, regardless of [the] kinds of jobs he/she is engaged in” (art. 14). Public officials and teachers have been granted the right to form trade unions through special laws.⁶ However, their right to associate is restricted for particular categories of public officials, such as senior officials, and there are limitations to their membership and their exercise of the right to freedom of expression (see section below for more details).

49. The right to strike seems to be unduly restricted due to an overly narrow definition and interpretation of “labour dispute”, which often makes strikes on issues falling under “managerial rights”, such as layoffs and factory closures or relocations, illegal. Moreover, the Special Rapporteur received testimonies and information indicating that the right to strike is frequently criminalized through the use of provisions in the Criminal Act, such as “obstruction of business”. Prosecutions under these provisions are often accompanied by heavy claims for damages by companies and provisional seizures of property. This has seriously affected defenders working on environmental rights as well as trade unionists, as indicated in the corresponding sections below.

⁵ Organization for Security and Co-operation in Europe, *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw, 2011), p. 24

⁶ The Government Officials Act and the Government Officials Public Service Regulations.

5. Institutional and policy framework

50. The Special Rapporteur was pleased to learn that authorities are trying to mainstream human rights into the institutional and policy framework. There is a National Action Plan for the Protection and Promotion of Human Rights (2012–2016) and a National Human Rights Policy Council under the Ministry of Justice.

51. During most of her meetings with public officials, legislators and the judiciary, the Special Rapporteur was pleased to ascertain a good level of awareness of human rights issues and international standards, as well as genuine interest in her mandate and her visit. She also took note of the continuous efforts to train State officials and security forces on human rights issues. She encouraged the Government to raise awareness about the Declaration on Human Rights Defenders and ensure that the recommendations of special procedures are implemented and disseminated among public officials.

52. During her visit, the Special Rapporteur learnt about the existence of the Students' Human Rights Ordinance in Seoul, which she considers an interesting example of citizen's initiatives at the local level to promote and protect human rights and a good practice to be replicated elsewhere. The Special Rapporteur visited Gwangju, which is a "human rights city" with its own Human Rights Charter and indicators, and, in her opinion, a very good example of human rights promotion and protection at the local level.

6. The National Human Rights Commission of Korea

53. NHRCK was established in 2001 as a body independent from the Government and was accredited "A" status by the International Coordinating Committee of National Human Rights Institutions in 2004. The NHRCK mandate is broad, as it receives individual complaints, carries out human rights education programmes and issues policy recommendations which are, nevertheless, not binding.

54. NHRCK is composed of 11 Commissioners, which include the Chairperson, 3 Standing Commissioners and 7 Non-standing Commissioners. Of these, four are elected by the National Assembly, four are nominated by the President and three are nominated by the Chief Justice of the Supreme Court and subsequently approved by the President.

55. NHRCK has played a key role in the consolidation of democracy in the Republic of Korea and the establishment of a solid human rights institutional framework. It has largely enjoyed the Government's cooperation and often publishes opinions on human rights-related issues, some of which have been instrumental in the defence of public rights and freedoms.

56. Nonetheless, the institution has in recent years received criticism from civil society with regard to its independence from the Government, which is at times perceived to be compromised.

57. During the reaccreditation process of NHRCK in 2008, a number of issues of concern were raised, including its lack of functional autonomy from the Government under the National Fiscal Act. The Sub-Committee on Accreditation of the International Coordinating Council also raised concerns about the appointment process of its Chairperson and Commissioners, which is based on nominations from the President, the National Assembly or the Chief Justice of the Supreme Court, and which does not allow for formal public consultation and participation of civil society. The Sub-Committee stressed the need for NHRCK to have more autonomy to appoint its own staff and urged it to consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations. In addition, concerns have been raised in response to a reduction of NHRCK human resources by 21 per cent in 2009.

58. The Special Rapporteur met with the NHRCK Chairperson, one of the Commissioners and large representation of its staff. During the meeting, she was pleased to learn that the institution had a dedicated focal point for defenders and encouraged it to publicize this. NHRCK has conducted relevant investigations into allegations of human rights violations, such as on the Yongsan incident, the Jeju naval-base construction and the Cheonan incident. The Commission has also been active in raising awareness and conducting public education campaigns about human rights and the Special Rapporteur was able to assess that during her visit to Gwangju and her meeting with the regional office of NHRCK.

59. However, according to information received during the visit of the Special Rapporteur, NHRCK has lost the confidence of certain national stakeholders in recent years, including some groups of defenders. Reports and allegations received by the Special Rapporteur made reference to undue dismissal and overruling of complaints by defenders, excessive delays of decisions regarding complaints, and a tendency to disregard defenders' demands.

60. The Special Rapporteur was particularly concerned about an unfortunate incident faced by a group of disability-rights defenders. In December 2010, disability-rights defenders and persons with disabilities staged a peaceful sit-in in the Commission's premises demanding the resignation of the Chairperson and the improvement of three disability laws. It is alleged that, during the sit-in, the electric power and heating was suspended, and the entry of food and access of the defenders' assistants was restricted. As a result of the extreme weather and low temperatures, one of the persons taking part in the protest caught pneumonia and died two weeks later.

61. The Special Rapporteur was deeply disturbed to hear about this incident and took note of the assurances provided by the NHRCK Chairperson that the power cut that occurred during the protest was due to routine operations by the management of the building. She also considers that the fact that the sit-in took place shows that relations between NHRCK and certain groups of defenders have been exceptionally tense at times. In her view, the sit-in should have been facilitated, including through the provisions of basic conditions, in order for the protesters to express their concerns about a public institution.

62. The Special Rapporteur believes that in order for NHRCK to regain the confidence of human rights defenders and the public in general, it must be able to work independently and professionally with members and staff who can exercise integrity and impartiality. In particular, NHRCK must be attentive to the situation and concerns of the different groups of defenders and act as mediator between public authorities or private actors and groups of defenders in a timely manner when needed.

IV. Situation of human rights defenders

63. Defenders are generally able to carry out their work in the Republic of Korea without hindrance and civil society is well organized and very vocal regarding human rights issues. However, during her visit, the Special Rapporteur observed that the environment in which defenders operate is quite polarized and not always sufficiently conducive to the defence and promotion of human rights and fundamental freedoms. This seems to stem from the lack of trust between defenders and authorities, and from important shortcomings in the legal framework, as indicated above. For effective dialogue to take place, both sides need to engage constructively, exercise diplomacy and patience to communicate their positions and listen to the arguments of the other side.

64. The Special Rapporteur met with a broad range of representatives of civil society and learned about the situation of particular groups of defenders and activists, some of them at the community level, which are facing important challenges when carrying out their work or exercising certain basic rights. Within the limits of the present report, the Special Rapporteur is only able to elaborate on the situation of selected groups of defenders and only briefly outlines the challenges faced by other groups.

A. Journalists and media workers

65. Free and independent media is an indicator of a healthy and open democracy as it encourages constructive criticism, critical thinking and thorough analysis of public affairs, often regarding the exercise of basic rights and freedoms.

66. In the course of her visit, the Special Rapporteur received credible testimonies and allegations of harassment, intimidation and illegal surveillance of journalists who work on human rights-related issues, report on public interest information, handle corruption cases of Government officials or publically criticize the Government. Some of the cases were raised by the Special Rapporteur on the right to freedom of opinion and expression during his visit in 2010 (A/HRC/17/27/Add.2 and Corr.1).

67. Journalists have been unfairly dismissed or disciplined when they have gone on strike to protest against unfair practices within broadcasting companies, and the cases of YTN and MBC are emblematic in this respect. Some of them have faced lawsuits for defamation which carry excessively high damage claims.

68. The Special Rapporteur expressed serious concern that these actions that unduly restrict the exercise of a fundamental right and stigmatize the work of media and journalists, which play a key role in the defence and promotion of human rights. She would like to reiterate observations and recommendations made by the Special Rapporteur on the right to freedom of opinion and expression, which she considers very pertinent and still applicable, in particular those regarding defamation and the exercise of freedom of opinion and expression on the Internet (A/HRC/17/27/Add.2, paras. 21–48, 89–94, and Corr.1).

B. Trade unionists and labour rights activists

69. As mentioned before, there are important limitations to the exercise of labour rights in the Republic of Korea whereby the right to collective bargaining and to strike as legitimate means to claim economic and social rights are seriously curtailed. Article 3 of the Trade Union and Labour Relations Adjustment Act stipulates that damages against a trade union or workers cannot be claimed when they originate from collective bargaining or industrial actions.

70. However, in addition to the narrow definition of “labour disputes” contained in that Act (art. 2, para. 5), already mentioned in the section above, the Special Rapporteur learned during her visit that strikes are often declared illegal by a court of law due to a restrictive interpretation of such rights. Strikes against redundancies, the movement of plants, and outsourcing (which are classified as “management rights”) are often deemed illegal despite their impact on working conditions and on economic and social rights. In this context, the practice of filing compensation lawsuits claiming exorbitant amounts for “obstruction of business” against unions and union members has become widespread. This practice is of particular concern for the Special Rapporteur since it not only criminalizes the activities of trade unions and their members, but also stigmatizes their work and discourages others from joining them in claiming labour rights.

71. The case of the protests of workers and labour rights defenders against massive layoffs at Hanjin Heavy Industries (Hope Bus) since 2011 is emblematic. According to testimonies and reports received, workers and others participating in the different rallies have faced excessive use of force by the police, including the use of tear gas and water cannons; summons and arrests, including of those monitoring the demonstrations; and heavy penalties for obstruction of traffic.

72. The Special Rapporteur also received testimonies and allegations that the system to report trade unions' establishment has been misused on various occasions and hence turned into a de facto approval system which could breach the principle of trade union autonomy. The cases of the unions formed by government employees (Korean Government Employees Union) and teachers (Korean Teachers and Education Workers Union) are illustrative cases in this respect. Both these unions have been trying to obtain legal status for several years without success, mainly due to the fact that their membership includes dismissed workers. The Special Rapporteur was informed that, on 2 August 2013, the Ministry of Labour rejected the fourth establishment report presented by the Korean Teachers and Education Workers Union.

73. The Special Rapporteur is particularly concerned about the situation of irregular or subcontracted workers, who, according to testimonies received, lack effective legal protection and suffer retaliation because of union activities in the form of unfair dismissal and intimidation. The case of the two workers from the Hyundai Motor Company in Ulsan, who have been sitting-in on a high voltage electric pylon for over six months protesting against the precarious situation of in-house subcontracted workers, illustrates the climate of tension and distrust that prevails in some industries. The two workers were also demanding that the company implements the decision of the Supreme Court delivered in 2012. The Supreme Court ruled that the one of these two labour rights defenders should be considered as a full-time employee given that he worked for more than two consecutive years for the company. Following her visit, the Special Rapporteur was informed that, on 8 August 2013, both workers descended from the tower due to health reasons. The Special Rapporteur met with both sides engaged in this dispute and believes that appropriate mediation mechanisms need to be put in place to encourage dialogue and conflict resolution between labour and management.

74. The Special Rapporteur also received serious allegations of the involvement of private consulting firms specialized in labour relations in oppressing trade unions. The Environment and Labour Committee of the National Assembly held a hearing about the matter in 2012, which revealed that certain consulting firms have played a significant role in intimidating trade unions by claiming damages for labour disputes and obtaining an order for provisional seizures of property. The Special Rapporteur is very concerned about these reports and urges the Government to ensure that such practices are not tolerated, and prompt and impartial investigations are conducted into allegations received and perpetrators are held accountable.

C. Environmental rights defenders

75. Defenders and community residents protesting against large-scale development projects are also facing important challenges in South Korea. The Special Rapporteur visited local communities in Miryang and Jeju Island who are opposing development projects.

76. In the case of Miryang, local residents are opposing the building of a 756kV power-transmission tower in connection with the construction of the Gori nuclear power plant. The conflict has been going on for eight years and the Special Rapporteur received testimonies of acts of intimidation, harassment and physical violence against protestors allegedly

perpetrated by workers and private security firms hired by the Korean Electric Power Corporation (KEPCO). Over the years, this has resulted in the self-immolation of a 74-year-old resident in protest over the situation and in serious incidents of physical attacks against residents and protestors, reportedly including a sexual assault against a monk.

77. The Special Rapporteur met with both KEPCO representatives and local residents during her visit. Most of the residents pointed to a lack of consultation and effective participation in the project as the main source of their grievances. They also claim their right to the enjoyment of the highest attainable standard of health and to live in a safe, clean and healthy environment.

78. The Special Rapporteur was encouraged by the attitude of the KEPCO representatives, who acknowledged basic flaws in the project before 2009, mostly in connection with their engagement with local residents and the availability of information about their activities. She welcomed a recent decision of the company to drop damage claims for “obstruction of business” against some residents and their efforts to educate their personnel and subcontractors on how to handle protests. However, she was informed that, in August 2013, KEPCO filed an injunction against village residents and one of the local committees opposing the project for disruption of the construction. She has also received information indicating that, on 30 September 2013, KEPCO had resumed the construction of the power tower without due consultation with the villagers. She encourages dialogue and welcomes the mediation initiated by the National Assembly in June 2013. In her view, NHRCK should also be seized of the situation in Miryang.

79. In Jeju Island, the Special Rapporteur was acquainted with the situation of groups of defenders and local residents who, since 2007, have been opposing the construction of a naval base both because of its impact on the environment of the area and the project’s military element. She received the testimonies of residents and local and foreign defenders who were intimidated and harassed by the police and workers of the naval base.

80. According to the information received, residents and defenders opposing the construction of the naval base often face charges of “obstruction of business” and are the subject of exorbitant damage claims and temporary seizures of property through civil suits. Reports indicate that around 210 defenders are currently awaiting trial with charges of “obstruction of business”. Moreover, the Special Rapporteur learned that foreign defenders coming to support them from abroad have been deported or denied entry in the country by way of the application of article 11, paragraph 3, of the Immigration Control Act.

81. The situation in Gangjeong Village (Jeju Island) was the subject of a communication sent by the Special Rapporteur jointly with two other United Nations experts in May 2012. In the letter, the experts expressed their concern at allegations received indicating acts of intimidation, harassment and ill-treatment of peaceful protestors opposing the construction of the naval base, including the deportation of two foreign activists. In the Government’s response dated 2 January 2013, the Special Rapporteur was pleased to note that NHRCK had received complaints and had initiated various investigations and made recommendations concerning police action in handling demonstrators. She still believes that training of the police deployed in the area on basic human rights standards, such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, remains necessary.

82. Mindful of the fact the Jeju naval base is an important national project with national security and economic development dimensions, the Special Rapporteur urges all parties involved to make the necessary efforts to open and maintain dialogue. The authorities must facilitate this process by setting up a mediation mechanism if necessary. In this connection, the Special Rapporteur encourages NHRCK to remain seized of the situation.

D. Defenders working for the rights of migrants

83. Documented and undocumented migrant workers in the Republic of Korea face important challenges, including discrimination, unpaid wages, difficulties in accessing social welfare and harassment. Defenders working on these issues include migrant workers themselves who have tried to associate to effectively claim their rights, including labour rights. However, this has not been possible, as the request of the Migrants' Trade Union (MTU) to be officially recognized as a labour union has not been successful so far.

84. MTU has been operating since 2005. In 2007, the Seoul High Court ruled that MTU be recognized as a legal union. Following an appeal by the Ministry of Labour of the decision of the High Court, the case has been with the Supreme Court, which has yet to make a decision, since 2007. This has left MTU without legal status for the past eight years. During her visit, the Special Rapporteur expressed concern that, as a consequence, migrant workers are denied the rights to collective bargaining and to strike. Hence, the work of those advocating for their rights becomes particularly challenging. She trusts that the judicial authorities will deliver their ruling regarding MTU in the near future.

85. The cases of various leaders of MTU have been raised by the Special Rapporteur in different communications to the Government since 2008. Cases have included the arrest and deportation in 2009 of MTU members who were active in favour of labour rights of migrants and the denial of entry and deportation in 2012 of the former President of Seoul-Gyeonggi-Incheon MTU (A/HRC/22/47/Add.4, paras. 342–345, and A/HRC/16/44/Add.1, paras. 1981–1992). She is grateful for the Government's replies.

86. The Special Rapporteur would like to urge the authorities to safeguard the fundamental right to freedom of association and collective bargaining of all migrant workers, regardless of their status. In this connection, she would like to underline the recommendations made by various United Nations treaty bodies⁷ requesting the State party to ensure that migrants are not subjected to discrimination or exploitation of any sort and that they are able to enjoy their right to organize without undue restrictions. She would also like to recall the recommendation by the ILO Committee on Freedom of Association requesting the Government to prioritize social dialogue as a means to find a negotiated solution to the situation of these workers.⁸

E. Students' rights defenders

87. During her visit, the Special Rapporteur also learned about the work of brave young students who struggle to advocate for the rights of fellow students in a context of strict school rules and regulations and strong social pressure to have a successful career. While recognizing the value of competition and certain discipline in school system, she expressed concern that some of the practices in schools could amount to violations of basic rights, particularly the use of corporal punishment or undue restrictions to the rights to freedom of expression and peaceful assembly by retaliating against student leaders. Various United Nations bodies have raised these issues, in particular the Committee on the Rights of the Child (see CRC/C/15/Add.197 and CRC/C/KOR/CO/3-4).

⁷ See concluding observations on the periodic reports of the Republic of Korea of the Committee on the Elimination of Racial Discrimination, CERD/C/KOR/CO/15-16, and of the Committee on Economic, Social and Cultural Rights, E/C.12/KOR/CO/3.

⁸ Document GB.317/INS/8, 367th Report of the Committee on Freedom of Association, case No. 2620, Republic of Korea, paras. 532–559.

88. The Special Rapporteur received testimonies and credible allegations of young activists who have dared to publicly denounce such practices and have faced important challenges, including disciplinary actions, coercive dropouts, expulsion, fines, discrimination, verbal abuse and ostracism. Many of these young activists finish by giving up their advocacy work for fear of disadvantages and punishments. Reports of violations are often made anonymously and students live in fear of retaliation.

89. She also met with young students advocating for student rights to be enshrined in the existing legal framework. Their efforts have made possible the issuance of Student Human Rights Ordinances at the local government level, which provide for the appointment of student rights commissions and officers who can investigate and provide remedy in cases of violations. These ordinances have been enacted in Gyeonggi-do and Gwangju in 2010 and in Seoul in 2012.

90. The Special Rapporteur was informed that the Ministry of Education had expressed opposition to such initiatives through local government ordinances claiming that they can infringe upon schools' autonomy and teachers' authority. In this connection, on 26 January 2012, the Ministry of Education filed an injunction to suspend the effect of the Seoul Student Human Rights Ordinance and initiated litigation to nullify it mostly based on flaws in the promulgations process, potential conflict with existing legislation and possible infringement of school autonomy.

91. The Special Rapporteur would like to recall recommendations made by the Committee on the Rights of the Child, whereby it has urged the authorities to consider amending legislation to ensure that children have the right to express their views freely, to facilitate their participation in all matters in decision-making process and in political activities both within and outside schools and to ensure that they fully enjoy their right to freedom of association and expression (CRC/C/KOR/CO/3-4, para. 41). She hopes that the legal proceedings around the Seoul Students' Human Rights Ordinance will be resolved in the best interest of the full exercise of fundamental rights and freedoms.

F. Whistle-blowers

92. Whistle-blowers are protected through the Act on Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission enacted in 2008 and is mostly focused on those who report corruption in the public sector. In 2011, the Act on the Protection of Public Interest Whistle-blowers was enacted and explicitly applies to anyone who reports a violation in the public interest, including those who disclose information in the private sector.

93. Within this framework, the confidentiality, physical protection and position of those who report on public interest information is guaranteed. If the disclosure of information reveals a crime committed by those reporting, there is a mitigation-of-culpability clause which can lead to a reduction in the punishment or disciplinary action against them. The existing legal framework also provides for financial incentives or rewards if the information disclosed results in the recovery or increase of revenue, whereby those who report can receive up to 20 per cent of the amount recovered.⁹ In addition, public interest whistle-blowers who face damages in connection to medical treatment, litigation expenses and losses in wages can receive financial compensation. The above-mentioned Act allows the launch of enquiries into claims of retaliation against those who report corruption offences and there is a telephone hotline to receive reports.

⁹ Anti-Corruption Act, arts. 11, para. 7; 36; 37.

94. The Special Rapporteur considers that the existing legal framework is, overall, conducive to the disclosure of public interest information, including information relevant to the effective exercise and protection of human rights. She believes that some of the provisions and services could be considered as a good practice to be replicated elsewhere, such as the mitigation of culpability provision and the availability of a hotline for those reporting.

95. Nevertheless, the Special Rapporteur received reports that whistle-blowers still face disciplinary actions, punitive dismissals, lawsuits and large damage claims when reporting information of public interest. She received information indicating that those who report to the press, to non-governmental organizations or on the Internet are not protected under the existing framework. In this connection, she would like to underline that reporting through external channels should be allowed in order to encourage and facilitate the disclosure of information of public interest.

G. Defenders working for the rights of lesbian, gay, bisexual and transgender people

96. Those working for the rights of lesbian, gay, bisexual and transgender people face discrimination, stigmatization and undue restrictions to their right to express themselves freely. The case of the Mapo Residents Rainbow Alliance, which applied to put up a banner in the Mapo-Gu neighbourhood of Seoul and found its request rejected due to the fact that it contained words such as “lesbian”, “gay”, “bisexual” and “transgender”, is relevant in this respect. It is reported that the relevant Mapo-Gu Office asked the organization to revise the content of the banner for fear that such words would be harmful to adolescents and uncomfortable for older people. The Special Rapporteur considers the Mapo banner incident as a violation of the right to freedom of expression and an act of discrimination on the basis of sexual orientation and gender identity. She is pleased to note that, after her visit, NHRCK issued an opinion on the case along the same lines.

97. The Special Rapporteur was informed that the Anti-Discrimination Bill, being discussed at the time of her visit, does not cover all grounds for discrimination, notably discrimination on the basis of sexual orientation and gender identity. While welcoming the legislative initiative, she is concerned about the narrow base of such important legislation and trusts that the relevant authorities will take the necessary action to ensure that the human rights obligations of the Republic of Korea will be upheld as this law is adopted.

H. Other defenders facing challenges

98. Other groups of defenders with which the Special Rapporteur met also face challenges when carrying out their work, including defenders working for the rights of persons with disabilities and on housing rights.

99. Disability rights defenders face important challenges when trying to exercise their right to freedom of expression and peaceful assembly claiming the elimination of discrimination, including in access to work, education and social welfare. They often face physical violence by law enforcement officials and heavy fines when rallying for the respect and protection of the rights of persons with disabilities.

100. Those defenders working on economic, social and cultural rights, including housing rights as a component of the right to an adequate standard of living, also face important challenges, including excessive use of force by the police when opposing forced evictions and violence by private security firms. Some are violently arrested and injured, and face heavy penalties. In connection to the Yongsan incident, two housing rights defenders who

were involved were severely injured and spent four years in hospital. To date, they are receiving psychotherapy due to the trauma and the legal proceedings against them.

V. Conclusions and recommendations

A. Conclusions

101. The Special Rapporteur considers that, overall, human rights defenders in the Republic of Korea are able to operate freely but in an environment which is not always sufficiently conducive. Significant challenges originate in connection with the existing legal framework governing the exercise of basic freedoms, such as the rights to freedoms of opinion and expression, of peaceful assembly and of association. Legislation pertaining to national security, and the difficult geopolitical situation in the Korean peninsula, can also have a restrictive impact on the environment in which defenders operate.

102. The Special Rapporteur would like to warn against the use of legislation to regulate, undermine or obstruct the work of defenders. She would like to refer to article 2, paragraph 2, of the Declaration on Human Rights Defenders that calls upon States to adopt legislative, administrative and other steps to ensure that the rights and freedoms enshrined in the Declaration are effectively guaranteed.

103. The Special Rapporteur appreciates the continuous efforts on the part of the authorities to mainstream human rights into the legal and administrative framework. She believes that more can be done to raise awareness about the Declaration on Human Rights Defenders and to implement recommendations made by special procedures.

104. The Special Rapporteur appreciates the important role played by the National Human Rights Commission of Korea (NHRCK) in the consolidation of democracy and the respect and promotion of human rights in the country. She is concerned that certain groups of defenders have lost trust in that institution. She urges NHRCK to do its utmost to regain the confidence of human rights defenders and be a strong, independent institution capable of credible and impartial scrutiny of the State's human rights obligations.

105. The Special Rapporteur notes that defenders operate in a rather polarized environment and believes that more effort is required, both from the authorities and the communities of defenders, to engage in genuine and constructive dialogue.

106. In this connection, the Special Rapporteur wishes to make the following recommendations in a spirit of engaging in a constructive dialogue with the authorities and other stakeholders involved.

B. Recommendations

107. The Special Rapporteur recommends that the Government of the Republic of Korea:

(a) Expedite the ratification of those United Nations treaties that are still not ratified, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and ratify International Labour Organization Conventions Nos. 87 (1948) concerning Freedom of Association

and Protection of the Right to Organise and 98 (1951) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively;

(b) Raise awareness of and disseminate the Declaration on Human Rights Defenders at the domestic level and publicly acknowledge the important role of defenders, thereby fostering a spirit of dialogue and constructive criticism;

(c) Avoid the criminalization and imposition of heavy penalties against defenders by conducting a thorough review of those laws and regulations affecting the exercise of the rights to freedoms of opinion and expression and of association and peaceful assembly, with a view to bring these laws into compliance with international standards;

(d) Ensure that legal provisions in the National Security Act about what constitutes a threat to national security are clearly defined and only applied when is strictly necessary in order to avoid criminalization of activities in defence of human rights;

(e) Ensure that defamation is only punishable under civil law and that compensation provided is proportionate to the harm done;

(f) Ensure that online expression is not unduly restricted by bringing problematic provisions contained in the Framework Act on Telecommunications into line with the international human rights law and by ensuring that the relevant institutions are transformed to an independent body and that adequate safeguards are in place;

(g) Ensure that the regime of notification for the conduct of public assemblies provided for in the Constitution is upheld, including by raising awareness about this among public officials and providing capacity-building on existing best practices and guidelines on freedom of assembly;

(h) Strengthen the capacities of the police and security forces in crowd control and human rights standards, including proportionate use of force and the role of defenders in the context of demonstrations; and promptly investigate any allegations of human rights violations and hold perpetrators accountable;

(i) Ensure the full independence and effectiveness of NHRCK, including by amending existing provisions to allow for public participation in the nomination and appointment process of Commissioners and to grant the Commission full autonomy in selecting its own staff;

(j) Ensure that labour rights, including collective bargaining and the right to strike, can be exercised without undue restrictions or intimidation, establishing adequate mediation mechanisms between management and labour unions and by protecting unions and workers from harassment by private firms and corporations;

(k) Carefully consider allegations and reports of violence, intimidation, harassment and surveillance on human rights defenders, conduct prompt and impartial investigations accordingly and hold perpetrators accountable;

(l) Ensure that the operations of private security firms comply with international standards and respect the rights of defenders, investigate any allegations of human rights violations and hold perpetrators accountable;

(m) Adopt a human rights-based approach to development policy and programming, including by establishing mechanisms for consultation and effective participation of the communities affected by large-scale development projects.

108. The Special Rapporteur recommends that the National Human Rights Commission of Korea:

- (a) Implement the recommendations of the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions in order to strengthen its independence and effectiveness;
- (b) Raise awareness about the existence of a focal point for defenders within the Commission and ensure that the views of defenders are taken into account;
- (c) Ensure timely interventions, responsiveness and accessibility of the institution to all citizens and actively engage with all groups of human rights defenders;
- (d) Remain seized of such situations as those in Miryang and Jeju Island.

109. The Special Rapporteur recommends that human rights defenders:

- (a) Ensure the dissemination of information about the Declaration on Human Rights Defenders and the role of defenders at the domestic level;
- (b) Strengthen efforts to lobby the Government to implement recommendations from international human rights mechanisms;
- (c) Strengthen efforts to maintain dialogue with the authorities and private actors to facilitate conflict resolution and the advancement of the protection and promotion of human rights;
- (d) Ensure that demonstrations are carried out in a peaceful manner and are properly monitored, and that violations are documented and reported.

110. The Special Rapporteur recommends that public and private corporations:

- (a) Respect and apply the Guiding Principles on Business and Human Rights;
- (b) Adopt a human rights policy in consultation with relevant stakeholders, including defenders and communities affected by their activities;
- (c) Exert due diligence in relation to human rights, notably to ensure that workers' rights as recognized in international human rights standards are respected;
- (d) Ensure that the conduct of workers and private security firms complies with international human rights standards and, in this connection, train employees and private security personnel on conflict resolution and international human rights standards, including the role of human rights defenders.