

H.E. Moon-Jae In
President of the Republic of Korea
Office of the President
The Blue House # 1 Sejongno, Jongno-gu,
Seoul, Republic of Korea

Bangkok, 10 December 2017

Re: Open letter to the Government of the Republic of Korea to grant pardon to all prisoners of conscience

Dear President Moon-Jae In,

On the International Human Rights Day, today, we, the Asian Forum for Human Rights and Development (FORUM-ASIA), are writing to request the unconditional release of all prisoners of conscience who have been unjustly charged under laws that restrict fundamental freedoms and stifle political dissent. Among those are: Mr. Lee Seok-ki, a former Member of the National Assembly; and Mr. Sang-gyun Han, a leader of the Korean Confederation of Trade Unions (KCTU). This request echoes the voice of 58 member organisations of FORUM-ASIA from 19 countries across Asia.

Mr. Lee Seok-ki, a former member of the now-dissolved Unified Progressive Party (UPP), was charged with plotting to overthrow the Government in 2013. In 2015, the Supreme Court of South Korea upheld the verdict of the Seoul High Court that had found he had violated the National Security Law and confirmed the nine-year prison term. The rulings on six other former UPP members were also upheld.

The three-year sentence brought against Mr. Sang-gyun Han, even though he exercised his rights to freedom of expression and freedom of peaceful assembly during the Third People's Rally on 14 November 2015 and 12 other rallies in 2014-2015, is another example of crackdown on political dissent. Mr. Han was arrested in Seoul on 10 December 2015 and charged, amongst other things, with inciting violence or sedition under Article 115 of the Criminal Code, and violations of the Assembly and Demonstration Act.

FORUM-ASIA notes with concern the application of laws that restrict the rights to freedom of expression and of peaceful assembly, notably the National Security Law, the Assembly and Demonstration Act, and Article 185 of the Criminal Code on General Obstruction of Traffic.

Over the years, the National Security Law, enacted in 1948, has been a widely used instrument of repression against any 'anti-government' activities, or anyone voicing dissent against the elected Government. In most cases, if not all, charges under the Law have resulted in guilty verdicts, including that of Mr. Lee Seok-ki. The application of the Law is fundamentally incompatible with the Republic of Korea's international human rights obligations on the freedoms of expression and peaceful assembly.

The Assembly and Demonstration Act, although considered to be in line with the Constitution, grants broad power to the authorities to determine the 'lawfulness' of assemblies, allowing them to be banned if deemed unlawful. This contradicts the Republic of Korea's positive obligation to facilitate and protect peaceful assemblies. The Law, read in conjunction with Article 185 of the Criminal Code on General Obstruction of Traffic, has been frequently used to pre-emptively ban assemblies or criminalise organisers and participants of assemblies.

In his report after his mission to the Republic of Korea in 2016, the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai, noted that, *'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.'*¹ He further emphasised that, *'The reasons that police rely on to ban or find assemblies unlawful, such as obstruction of traffic, disturbance of 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 ICCPR to justify limitations on assemblies.'*²

The detention of Mr. Sang-gyun Han, who was charged under both the Assembly and Demonstration Act and Article 185 of the Criminal Code on General Obstruction of Traffic and sentenced to three years' imprisonment, was considered arbitrary by the UN Working Group on Arbitrary Detention. In its Opinion No. 22/2017,³ the UN Working Group found that the charges brought against and sentencing of one of the most prominent leaders of the labour union in the country were arbitrary. It argued that he should have never been detained in the first place, as he was exercising his rights to freedom of expression and peaceful assembly. The UN Working Group urged the Government to release the detained person immediately and accord him compensation and other reparations.

We request you to consider this for the adverse impact it might have on the rights to freedom of expression and peaceful assembly in the country. It could also damage the image of the Republic of Korea as a nation committed to human rights and the protection of the fundamental rights of the people.

We would like to remind you of the recommendations accepted under the second Universal Periodic Review (UPR) cycle in 2012, the concluding observations of the fourth periodic report of 2015, and the earlier mentioned specific recommendations from the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the third UPR cycle in 2017 of your country to release prisoners of conscience.

Therefore, FORUM-ASIA urgently calls on the Government of Republic of Korea to:

1. Grant pardon to all prisoners of conscience who have been unjustly charged and sentenced to prison terms, including lawmaker Lee Seok-ki and the six other former UPP members, as well as Sang-gyun Han, the leader of the Korean Confederation of Trade Unions. The Government must stop all continuing investigations and detentions regarding these cases.
2. Stop all ongoing investigations and current detentions in similar cases; and
3. Review and amend all laws that restrict the rights to freedom of expression and peaceful assembly in the Republic of Korea.

Yours sincerely,
John Samuel



Asian Forum for Human Rights and Development (FORUM-ASIA)

¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2, 15 June 2016, point 20.

² *Ibid.*, point 28.

³ UN Working Group on Arbitrary Detention, Opinion No. 22/2017 concerning Sang-gyun Han and Young-joo Lee (Republic of Korea), A/HRC/WGAD/2017/22, 30 May 2017.

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