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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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Excellency,

We have the honor to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information received regarding **acts of harassment, intimidation and ill-treatment of peaceful protesters in [REDACTED] village**. A naval base is being constructed on the coast of [REDACTED] village, a UNESCO-classified biosphere reserve.

According to the information received:

The naval base under construction on the coast of [REDACTED] village is allegedly destroying the seashore. In April 2007, a meeting of the villagers was reportedly held at which 87 out of 1,900 [REDACTED] villagers voted in favour of constructing the base. However, this meeting was announced only four days before it was held, and many villagers did not participate. In a referendum in August 2007, 94% of villagers allegedly voted against the construction of the base.

Since that time, a number of peaceful protestors at the site have reported arrests, detentions, and police abuse. It is reported that by the end of February 2012, 329 people had been arrested for demonstrating peacefully to oppose the building of the base.

On 6 April 2011, Mr. [REDACTED], a peace activist, was reportedly arrested for crawling under a construction vehicle to prevent it from entering the construction site. Mr. [REDACTED] was violently dragged out by the police, and was allegedly beaten

and partially stripped of his clothing. Sources indicate that he was detained for 57 days. On 30 January 2012, Mr. [REDACTED] was reportedly arrested again when he and other activists prevented a construction vehicle from entering the site. Mr. [REDACTED] reported witnessing harassment of female protestors by police and private individuals. He was reportedly released on probation on 20 March 2012.

On 24 August 2011, [REDACTED] village leader [REDACTED] and [REDACTED] were reportedly arrested and charged with obstruction of construction. Reportedly, Mr. [REDACTED] has been repeatedly harassed by police for peacefully protesting the construction. He and Mr. [REDACTED] were arrested while protesting from the top of a crane on the construction site. Mr. [REDACTED] was reportedly detained for 92 days before being released on bail set at 10 million KRW and placed on three years' probation. He has reportedly lodged an appeal. Mr. [REDACTED] was detained until 23 November 2011 and given a sentence of eight months in prison and three years' probation. An injunction has allegedly been granted prohibiting Mr. [REDACTED], Mr. [REDACTED], and 76 other human rights activists from entering the construction site, and ordering them to pay two million KRW each time they break the injunction.

It is further reported that in early October 2011, Mr. [REDACTED] and about ten other village human rights activists kayaked to the site of the proposed base to deliver food and clothing to other activists who were staging a sit-in on the site. Allegedly the Coast Guard blocked and overturned the kayaks, and some members of the Coast Guard repeatedly punched Mr. [REDACTED], pushed him underwater, and took away his safety equipment. On 23 February 2012, Mr. [REDACTED] reportedly kayaked the site again, where he stayed for one night. According to reports, he was then arrested, charged with obstructing government officials' execution of their duties, before being released the next day having been sentenced to six months in prison and one year of probation. He has reportedly lodged an appeal.

On 1 April 2012, Mr. [REDACTED] allegedly again attempted to enter the rock bed with other human rights activists and was arrested. Mr. [REDACTED], protesting with Father [REDACTED], a Catholic priest, and several other activists, reported approaching the construction site so that his protests could be better heard. He then reports riot police hitting him, stepping on him, twisting his arm, and hitting his head against a rock several times while carrying him away from the site. He resisted the police and while being forced inside the police car, his head was stuck between the car and the ground. Though he protested, he reports hearing the police laughing as they continued to forcibly remove him from under the car, causing several of his teeth to be crushed. It reportedly took the police thirty minutes to call an ambulance. Sources indicate that on 3 April 2012, he was judged to be at risk of continuing to protest, and is still detained.

Father [REDACTED] had also been reportedly arrested for holding a mass in front of the site on 30 September 2011, and again for protesting on 6 October 2011 and 30 January 2012. On 6 April 2012, Father [REDACTED] was confronted by police officers

while conducting a prayer on the west seawall of [REDACTED], an area that is not part of the construction site. Reportedly, police officers blocked the roads toward [REDACTED] port, and during the altercation Father [REDACTED] fell approximately seven meters and fractured his spine. Reports indicate that he is currently hospitalized. Father [REDACTED] was recently awarded the 2012 [REDACTED] Prize for Human Rights.

On 7 March 2012, approximately twenty activists were arrested for protesting at the site of the proposed base. Reportedly, 1,000 police officers were present to control 200 protestors, who were demonstrating peacefully. It is reported that on 11 March, 2012, Mr. [REDACTED], a pastor, and Father [REDACTED], a Catholic priest, were also arrested, reportedly for damaging the fence surrounding the proposed naval base.

On 15 March 2012, the Government reportedly ordered the deportation of French activist Mr. [REDACTED]. Ms. [REDACTED], an activist and Nobel Peace Prize nominee from the UK, was also allegedly asked to leave the country. Further reports indicate that on 14 March 2012, three American Veterans for Peace members were prevented from entering the Republic of Korea.

On 16 April 2012, some human rights advocates reportedly linked arms through polyvinyl chloride (PVC) pipes to make a chain and prevent construction vehicles from entering the site. It is reported that the police used an electric saw to attempt to cut the pipes. Sources indicate that fourteen people were arrested.

The [REDACTED] Police reportedly notified the [REDACTED] Village Committee on 16 April 2012 that they cannot hold any demonstrations from 15 April to 12 May 2012 in six specific areas. People are prohibited from protesting in almost all parts of [REDACTED] related to the construction, including the [REDACTED] steam gym park, parking lot, in front of the Navy Base Construction Committee, in front of the construction site, [REDACTED] three-way intersection, and [REDACTED] port.

Should this information be corroborated, serious concern is expressed regarding the physical and physiological integrity of all persons involved in the aforementioned events, including Mr. [REDACTED], Father [REDACTED], Mr. [REDACTED], Father [REDACTED], Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED]. Concern is also expressed due to allegations of acts of harassment, intimidation and ill-treatment of peaceful protesters in the context of the protests organized against the construction of a naval base in [REDACTED] village.

While we do not wish to prejudge the accuracy of these allegations, we wish to reiterate that under article 3 of the UN Code of Conduct for Law Enforcement Officials, "(l)aw enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". As well, and in line with provisions 4 and 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials shall make use of non-violent means, as far as

possible; and that States should ensure that “arbitrary or abusive use of force... by law enforcement officials is punished as a criminal offence under their law”. Furthermore, in the event of unlawful peaceful assemblies, we recall that article 13 of the same instrument stipulates that, “law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary”.

We would also like to recall that the State has a positive obligation to take all necessary measures to ensure that the right to freedom of peaceful assembly is respected, in accordance with article 21 of the International Covenant on Civil and Political Rights (ICCPR). In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular preambular paragraph 7, where it recognizes that, “exercising the rights to freedom of peaceful assembly ... free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting... political beliefs”. In this context, we would like to recall operative paragraph 1 of the same resolution that, “calls upon States to respect and fully protect the rights of all individuals to assemble peacefully... including persons espousing minority or dissenting views or beliefs, human rights defenders,... and others,..., seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly... are in accordance with their obligations under international human rights law.”

We wish to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In this connection, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?

2. Has a complaint been lodged? Please provide the details, and where available the results, of any investigation, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have been officially reported, or if they have been inconclusive, please explain why.
3. Please provide information concerning the legal grounds for the arrest and detention of the aforementioned persons and how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration on Human Rights and the ICCPR. Please provide information on whether all detainees have had access to family members, legal counsel, and medical personnel.
4. Please provide details of any measures taken to ensure the physical and psychological integrity of the persons involved in the aforementioned events.
5. In the event that sanctions have been imposed, please provide the full details of any prosecutions which have been undertaken in this regard. Please explain what concrete measures have been taken to ensure adequate protection of the rights to freedom of expression, peaceful assembly and association of activists and human rights defenders, particularly in Jeju province.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of all persons involved in the aforementioned events, including Mr. [REDACTED], Father [REDACTED], Mr. [REDACTED], Father [REDACTED], Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED] respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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freedom of opinion and expression

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