SEOUl – I would like to thank the Government of the Republic of Korea for inviting me to undertake this official mission here from 20 to 29 January 2016, my first to Asia.

I would also like to thank the Government for its excellent cooperation in organizing the mission, including the visit with KCTU president Mr. Han Sang-gyun in prison. I have had
informative exchanges with the members of the executive, legislative and judicial branches, and met with a list of officials too long to list here. Their input and assistance was much appreciated even though I did not meet with any of the political leaders of government despite my repeated requests.

I also met with activists representing different perspectives, observed a number of protests, talked with families who lost their children in the Sewol ferry tragedy, and more. I travelled to Ansan, Sejong, Gyeongju, and Pohang.

These experiences allowed me to witness firsthand the vibrancy of this country’s civil society and democracy. I am impressed by the boisterous and energetic tradition of people joining together and taking to the streets or the halls of power to speak their mind and effect change. Some view this tradition as a bit rowdy, but civil society’s heart beats loudly in South Korea, something that all democracies should aspire to.

The Republic of Korea has impressive achievements: in the past decades, it has successfully transitioned from authoritarian rule to democracy and fostered one of the most remarkable economic transformation.

The Republic of Korea also plays a leading role in the promotion and protection of human rights at the international level. It currently holds the presidency of the United Nations Human Rights Council, and has co-sponsored a series of key Human Rights Council resolutions, most notably the one establishing my mandate; on the promotion and protection of human rights in the context of peaceful protests; and on civil society space.

It has been an arduous journey, but South Korea has taken its seat as a democratic nation. If I could emphasize one message to the people of South Korea and the Government today, it would be this: the project of building democracy and human rights in South Korea is not over; indeed it never truly is, in any nation. What we have is a structure, and our solemn task as governments and citizens is to continually build upon that structure, strengthening the foundation, cultivating its resilience.

It is inevitable that this structure will crack over time. That is the nature of democracy. What concerns me as I conclude my visit to South Korea today is how the Government is addressing these flaws. I sense a trend of gradual regression on the rights to freedom of peaceful assembly and of association – not a dramatic shutdown of these rights, but a slow, creeping inclination to degrade them. Even the courts which should always interpret laws in favor of rights have recently been moving towards restricting rights rather than expanding them.

I heard government officials repeatedly cite peoples’ “convenience” as a rationale for restricting protests. They have also cited security challenges, particularly in relation to the Democratic People’s Republic of Korea, as a reason for limiting rights. I acknowledge these challenges, but they should not be an excuse for unduly limiting rights.
To be sure, the recent protests in South Korea have been anything but convenient. The rights to freedom of peaceful assembly and of association are not always the most popular of rights for people who are not actually exercising them. But there is a reason that the international community has collectively enshrined them as fundamental rights. They are among the best tools to address social conflict. They allow underrepresented groups to amplify their voices; they give dispossessed people a channel for engagement and a stake in society; and above all they allow us to thrash out our disagreements in a peaceful—even if messy—manner.

And consider the alternatives. DPRK is a glaring example to avoid. And there are countless others throughout the world, where governments have attempted to suppress peaceful dissent, only to see violent resistance flourish.

South Korea’s history is different. Protests helped make this country great, and openness has long been a tradition. I would urge both the people and Government of this country to cherish that legacy.

With these preliminary observations in mind, I would like to address a few specific areas of concern. These and more issues will be covered comprehensively in my report to the Human Rights Council in June.

**Freedom Of Peaceful Assembly**

Despite South Korea’s rich history of protest, I find that space for exercising the right to peaceful assembly has been shrinking over the past few years. It is also clear that other channels for dialogue and communication between the government and the governed have not been working as well as they should, making protests an early option.

My mandate works to protect and promote peaceful assemblies, based on the intentions of the organizers. I urge all South Koreans to engage in assemblies with peaceful intentions, for that ensures the message is heard better and reduces tensions.

However, because the right to peaceful assembly is an individual right, the fact that a few people are violent in an assembly does not make the assembly violent under international law. Where a few people are violent, the police have the responsibility to find ways to apprehend and hold them accountable, using the least disruptive means possible. The need to disperse assemblies should therefore be very rare.

Moreover, while violent protesters lose their protection under the right to peaceful assembly, they retain all their other rights, including the right to bodily integrity and not to be tortured or subjected to excessive force.

Undue restrictions are seeping into every stage of the assembly process in South Korea – before, during and after. These restrictions range from formal legal constraints to more practical obstacles and are gradually reducing the right to peaceful assembly to a privilege.
A fundamental problem is the fact that assemblies are deemed to be “unlawful” unless organizers notify the authorities in advance, and many demonstrations are banned after notification. The Constitution of the Republic of Korea, the Assembly and Demonstration Act (ADA) and international standards recognize that it may be acceptable for authorities to require notification prior to the holding of an assembly.

However, they are equally clear that organizers’ failure to notify does not make an assembly illegal. Nor should the notification process be used to preemptively ban assemblies, except in very limited circumstances. I was informed that in many cases, notifications result in authorities banning assemblies to prevent disruption of traffic or to enforce blanket bans against assemblies at certain locations or times; these justifications are not appropriate under international human rights law.

Certain police tactics during assemblies also concern me, such as the use of water cannons and bus barricades. I note that in 1999 the government stopped using tear gas in the management of protests. The result was reduced violence during the assemblies that followed. I would urge the authorities to adopt the same philosophy of de-escalation in evaluating the use of water cannons and bus barricades.

Water cannons can inflict great bodily harm, as the case of Mr. Baek Nam-gi tragically illustrates. Many other peaceful participants told of water cannons being used against them with no apparent justification, and inflicting injuries.

Bus barricades keep protesters out of sight and sound of their target audience, reducing the effectiveness of their messages. Furthermore, the use of water cannons and bus barricades—particularly when coupled with massive deployment of force—is almost guaranteed to increase tension between police and protesters, who may see this as an unprovoked attack. This is not a justification of violence, but rather an observation of human nature: aggression only begets aggression.

De-escalation and communication are the more pragmatic options—in terms of proper assembly management, in terms of protecting protesters’ human rights and for ensuring public order. It is my experience that if the state becomes more open in allowing the free exercise of assembly rights, then protesters become less violent.

The widespread use of conscripted youth on the police front lines of protests is a particularly ill-conceived policy, given their relative lack of training and experience. Policing assemblies, especially large and heated protests, is not a job for a novice. It requires the utmost experience, training and skill.

In the aftermath of assemblies, I was informed that organizers and participants are often summoned for investigation by police on charges of “general obstruction of traffic” or other charges. Following the ’Peoples Rally’ held in November 2015, around 1,500 participants were summoned for investigation. Some of these were innocent passers-by and organizers of assemblies who had no personal role in the violence.
These actions deter active and would-be assembly organizers and participants. I am confident that authorities have the capacity to identify and isolate those engaged in criminal acts without resorting to investigation methods that weaken the right to peaceful assembly. Let me underline that organizers of peaceful assemblies should not be held liable, under any circumstances, for the criminal actions of others, as it appears to have happened in the cases of Mr. Han Sang-gyun and Park Lae-goon.

Finally, victims of excessive force by police during assemblies repeatedly raised the fact that while police typically wear name tags, their riot protection gear and outer jackets do not have similar identification tags, making it impossible to identify any officer in order to ensure accountability. I welcome the authorities’ assurances that they will correct this anomaly soon.

I also appreciate the interest by the Police to look into allegations by persons with disabilities, who reported that their unique circumstances are not accommodated by police during the management of assemblies. I urge the authorities to exercise great caution in interacting with disabled individuals and their assistive devices, which are integral to their lives.

**Sewol Ferry Disaster**

The Sewol Ferry Disaster is one of the most tragic accidents in South Korea’s recent past. I was honored to visit the memorial for the victims in Ansan, and deeply touched by the tributes, especially to the young lives that were lost. The pain experienced by the families of the victims is still very raw, but I was impressed by their commitment to ensuring that a similar tragedy does not recur.

The assemblies related to the Ferry Disaster are a natural response to the feeling that the families’ concerns are not being addressed adequately by the authorities. While the government has made efforts to investigate the accident, hold to account some of those involved, and provide compensation to the families, some of those closely affected by this tragedy do not feel that this is enough.

I do not judge which side is right. Rather, I wish to emphasize that the whole point of the right to freedom of assembly is to give people a space to air their disagreements in a peaceful manner, so that disputes can ultimately be resolved. As part of this right, the Government has an obligation to maintain open communication channels with the Sewol families and their representatives. It is in the interests of the Government, the families and the nation that this tragedy does not become politicized and influence the responses to peaceful assemblies related to the issue.

**Freedom Of Association**

**Labor**

My visit happened to coincide with efforts by the government to implement labor reforms that have proven unpopular with many workers. Trade unions have been
actively involved in organizing and participating in assemblies over the past year, and the concerns I have raised relating to the right to freedom of peaceful assembly apply to assemblies organized by trade unions.

The Constitution and laws of the Republic of Korea guarantee workers’ rights to form and join associations, collectively bargain and take collective action. Despite general legal provisions recognizing workers’ rights overall, there remain challenges jeopardizing the realization of these rights for certain categories of workers. ‘Irregular’ workers, such as subcontractors; those in ‘disguised working relationships’, such as the cargo truckers; teachers, public officials and the dismissed among them, all face substantial hurdles to form and join associations or to mobilize them effectively for improving labor conditions.

I am concerned about the recent outlawing of the Korean Teachers and Education Workers union (KTU), because it retained nine dismissed teachers as members. International human rights law is clear that the dissolution of a trade union should only occur in extremely serious cases, as a measure of last resort. I do not consider that the case of KTU met this high threshold.

Moreover, trade unions face a number of obstacles in their efforts to protect members’ rights. I received reports of employees being pressured to join entities that favor employers’ interests. The Valeo Electrical Systems Korea case is especially disturbing and I hope the competent judicial authorities will include international standards as they adjudicate the matter, given its likely impact on labor relations for the future.

In principle everyone, including employers, can form associations; but it is a violation of the right to freedom of association when these associations are intended to displace independent trade unions, especially when only majority unions can engage in collective bargaining, as in South Korea.

The right to strike is also constrained. Trade unions cannot strike over issues beyond immediate disputes emerging from the terms and conditions of employment. Workers cannot engage in solidarity strikes, and those engaged in what are regarded as “illegal strikes” by the government may be subject to criminal charges of obstruction of business or civil suits for damages.

In my discussions with government, I found a palpable attitude of indifference towards the ability of workers to associate. The Ministry of Labour informed me that it is “neutral” towards trade unions. Yet, neutrality is not good enough under international law. The International Covenant on Civil and Political Rights (ICCPR) is clear that States must take positive measures to protect and foster the enjoyment of fundamental rights.

I urge the Government of the Republic of Korea to prioritize this. Some immediate steps should be the ratification of International Labour Organization Conventions 87 and 98,
and rescinding the reservation to article 22 of the ICCPR, which have been repeatedly recommended by international human rights mechanisms.

**Associations**

Associations in the Republic of Korea are able to establish and operate in several different forms relatively easily, which is commendable. Similarly, I am impressed by the active participation of society in supporting the activities of civil society organizations through membership and donations. However, more could be done to improve the space for civil society organizations to freely operate.

The system for the grant of legal personality provides officials with broad discretion, creating uncertainty. Several associations have faced difficulties in obtaining legal status simply because authorities’ denied competence to accept the applications.

The Beyond the Rainbow Foundation, a sexual minorities association, was denied legal entity status from the Ministry of Justice, ostensibly because the group works specifically on sexual minorities, while the ministry claims it can only register groups which work on “general human rights” issues. Who, then, should the Rainbow Foundation apply to? The ministry didn’t provide a clear answer to that question. Again, the Government should take proactive measures to promote the right to association to all.

The association 4.16 Sewol Families for Truth and A Safer Society’ faced similar issues seeking legal status from the Ministry of Maritime Affairs and Fisheries.

I also share the concerns expressed by several international human rights mechanisms about article 7 of the National Security Act, which contains broad and vague language that could be used to unduly restrict assembly and association rights. This article should be abrogated.

In conclusion, I would like to reiterate my appreciation for the excellent co-operation I have received from all interlocutors during this visit. I offer these observations and recommendations in a spirit of constructive dialogue. I look forward to a continued dialogue with the Government of the Republic of Korea, and I stand ready to offer technical assistance as deemed appropriate, with a view to consolidating the exercise of the rights to freedom of peaceful assembly and of association in the country.

*This statement is also available in [Korean](#)*

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