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March 29, 2002

Mr. Kim Dae-jung

President of the Republic of Korea
1 Sejong-no, Jongno-ku
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Republic of Korea

Your Excellency,

The Lawyers Committee for Human Rights wrote to you on October 16, 2001 to urge you to release immediately and unconditionally **Mr. Dan Byung-ho**, President of the Korean Confederation of Trade Unions (KCTU), who was imprisoned in August for his participation in a general strike in June of 2001. We write to you today to express our renewed concern upon learning that Mr. Dan was sentenced to two years imprisonment on March 18, 2002, by the Seoul Court of First Instance, for exercising his basic rights to strike, and to freedom of association and assembly guaranteed under Korean and international law.

Mr. Dan's conviction and imprisonment on charges including "conspiracy to interfere in business" (a reference to Art. 314 of the Korean Criminal Code), "obstruction of the enforcement of law" and "violation of the trade union/industrial relations law," violate fundamental human rights protected under international law and enshrined in the Korean Constitution. The Lawyers Committee is deeply concerned that Korean industrial laws and the Korean criminal code are being excessively deployed to criminalize strike activities and trade unions, as is evident in the case of Mr. Dan.

The Lawyers Committee believes that Mr. Dan's case is not an isolated one, but part of an ongoing campaign to silence those trade unionists who strive to improve labor standards and to defend and promote workers' rights in the Republic of Korea. Reports indicate that there have been some 720 trade unionists jailed under your government in the last four and a half years.

The Republic of Korea is obligated under Korean and international law to uphold basic human rights, including the right to strike, freedom of association and freedom of assembly. Article 33 of the Constitution of the Republic of Korea guarantees the right to strike and to collectively bargain. And as party to the International Covenant on Civil and Political Rights (ICCPR), the Republic of Korea is bound by Article 21 to guarantee the right of free assembly and by Article 22 to protect the right to freedom of association, including the right form and join trade unions.

Furthermore, the Republic of Korea is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which stipulates in Article 8 that States undertake to ensure:

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- The right of everyone to form and join the trade unions of his or her choice... (Art. 8, 1a.);
- The right of trade unions to establish national federations or confederations and the right to form or join international trade union organizations... (Art. 8, 1b);
- The right of trade unions to function freely... (Art. 8, 1c.);
- The right to strike... (Art. 8, 1d.).

As party to the ICESCR, the Republic of Korea undergoes periodic reviews of their implementation of the Covenant by the UN Committee on Economic, Social and Cultural Rights. In its most recent review, the Committee found the Republic of Korea to be in clear violation of Article 8. The Committee stated on May 21, 2001 that:

[It] is concerned that the laws governing industrial actions are not transparent and appear to give the authorities inordinate discretion in determining the legality of strikes. In this regard, it considers entirely unacceptable the approach taken to criminalize strike activities. In addition, the Committee is deeply disturbed by the excessive force used by the police against recent labour demonstrations that had been set off by massive lay-offs. The Committee considers the combined effect of these circumstances to be a clear negation of the rights provided for in article 8 of the Covenant. (D.20)

Following this observation, the Committee made the following conclusion and recommendation:

The Committee reminds the State party that the provisions of article 8 guarantee for all persons the right to freely form and join trade unions, the right to engage in collective bargaining through trade unions for the promotion of their economic and social interests, as well as the right to strike. The Committee urges the State party to desist from using criminal proceedings against striking trade unions. It also urges the State party to refrain from using any force beyond that absolutely necessary for the maintenance of public order. (E.39)

The Lawyers Committee urges the Republic of Korea to reverse this trend of disregard for these internationally recognized human rights immediately.

As well as recognizing the right to freedom of association in its Constitution, the Republic of Korea has acknowledged that this right is fundamental and has committed to upholding it through its membership in the International Labor Organization (ILO). Specifically, under the ILO's *Declaration on Fundamental Principles and Rights at Work* (1998), the Republic of Korea has agreed "to respect, to promote and to realize" the workers' right to freedom of association and the right to collectively bargain. Moreover, as party to the *ILO Workers' Representatives Convention* (1971), the Republic of Korea is required to "take effective measures to protect workers' representatives from acts prejudicial to them based on their status or activities as a workers' representative."

The sanction of imprisonment cannot be imposed on an individual for the simple exercise of their basic rights. **Mr. Dan Byung-ho** must, therefore, be released immediately and unconditionally. We further urge you to end the campaign against trade unionists aimed at criminalizing their struggle to improve labor conditions for the working people of the Republic of Korea. The Lawyers Committee will continue to monitor the case of Mr. Dan, as well as the general climate in the Republic of Korea for the free exercise by all persons of their basic human rights, especially with respect to the rights of workers to organize to defend their interests.

We would appreciate any timely information concerning the measures taken by your administration to address our concerns.

Respectfully,



Neil Hicks,

Director, Human Rights Defenders Initiative

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