HUMAN RIGHTS IN SOUTH KOREA

THE SECOND COUNTER REPORT
TO THE SECOND PERIODIC REPORT
OF THE REPUBLIC OF KOREA
UNDER ARTICLE 40 OF
THE INTERNATIONAL COVENANT
ON
CIVIL AND POLITICAL RIGHTS

••••

AUGUST 1999

LAWYERS FOR
A DEMOCRATIC SOCIETY

HUMAN RIGHTS IN SOUTH KOREA 1999

Minbyun - Lawyers for a Democratic Society

5F Shinjung Bldg. 1555-3, Seocho-dong,
Seocho-gu, Seoul, South Korea
Tel) 82 2 522 7284 Fax)82 2 522 7285
http://minbyun.jinbo.net
Email)m321@chollian.net

HUMAN RIGHTS IN SOUTH KOREA

THE SECOND COUNTER REPORT
TO THE SECOND PERIODIC REPORT
OF THE REPUBLIC OF KOREA
UNDER ARTICLE 40 OF
THE INTERNATIONAL COVENANT
ON
CIVIL AND POLITICAL RIGHTS

◆

AUGUST 1999

Minbyun – Lawyers for a Democratic Society

5F Shinjung Bldg. 1555-3, Seocho-dong,
Seocho-gu, Seoul, South Korea
Tel) 82 2-522-7284 Fax) 82 2-522-7285
http://minbyun.jinbo.net
Email) m321@chollian.net

PREFACE

We, Lawyers for a Democratic Society, after a consultation with other members of Korea Human Rights Network respectfully submit this report to the Human rights Committee(the "Committee") and its members. We hope to provide information that will help the examination, by the Committee, of the second periodic report submitted by the government of the Republic of Korea(CCPR/C/114/Add.1) under Article 40 of the International Covenant on Civil and Political Rights(the "Covenant").

The people in South Korea do not fully enjoy the human rights recognized in the Covenant in spite of South Korea's economic development and the reconciliation between the South and North Koreas. The report of the Republic of Korea, however, seems to fall short of explaining the human rights situation in reality. Therefore, by providing our supplementary information through our report, we sincerely hope to facilitate the constructive dialogue between the Committee and the government of the Republic of Korea.

Although we have made our best efforts to discuss some of the important issues on the human rights situations in South Korea, we would like to advise the Committee and its members not to assume that the rights not explained in this report are satisfactorily guaranteed in the country. The ratification of the Covenant by the government of the Republic of Korea is, we believe, the sign of its commitment to improve the human rights situation in accordance with the internationally accepted human rights norms.

We sincerely hope our report will be seriously considered by the Committee and help in bringing about the improvement of the human rights situation in our country.

Youngdo Choi

President
Minbyun - Lawyers for a Democratic Society

CONTENTS

PART I

Objective of the counter report

1. This report is submitted by Lawyers for a Democratic Society (hereafter referred to as "Minbyun") as a counter-report to the government report of the Republic of Korea ("South Korea") to the Human Rights Committee ("the Committee") dated October 2, 1997 under Article 40, Paragraph 1 of the International Covenant on Civil and Political Rights ("the Covenant").
Minbyun is a non-governmental human rights organization in South Korea. Established in 1988, it consists of about 300 lawyers and is devoted to the improvement of the human rights situation in South Korea. Minbyun, in association with the National Council of Churches in Korea, submitted the first counter-report during the Committee's revision of the first report in July 1992.

2. It is our sincere hope that the coming session of the Committee will provide a positive and productive forum for the realization of civil and political rights. This report is designed to provide accurate and honest information, which may serve to clarify the human rights issues in South Korea, in order to open up a constructive dialogue between the government and the Committee. Hence, this report focuses on situations in which the Covenant may be implemented. It updates the human rights situation in South Korea and describes conditions beyond the period mentioned by the government in this report (a period of five years after the first report was submitted) up to the present.

General Critique on the Government Report

3. The government report emphasizes that the most significant change South Korea has experienced since the submission of the first report is the 1993 establishment of a new civilian government. The present report explains measures taken and changes made by the government in relation to Articles of the Covenant. The report claims that it provides an accurate profile of the human rights situation in South Korea, pointing out aspects in need of improvement.

4. However, the government report only describes laws and institutions related to the Covenant. It presents only a few examples of court decisions, including decisions made

by the Constitutional Court. It lacks a comprehensive and detailed explanation of how human rights protection has been institutionalized, nor does it present cases of how it has been violated.

5. For example, the Committee originally recommended that serious attempts be made to phase out the National Security Law, a major obstacle to the full realization of human rights enshrined in the Covenant. The Committee also recommended that further measures be taken to reduce restrictions on the right to peaceful assembly. However, the government did not take any measures toward the amendment of related regulations. There were no changes made from the situation prior to the first government report in the enforcement of the National Security Law and the Act Concerning Assembly and Demonstration (ADA). The government report fails to mention the factors and difficulties affecting the implementation of the Covenant in light of the above mentioned criticisms. It does not refer to the related judicial precedents or statistics that could accurately portray the human rights situation in South Korea.

6. The government report does not touch on instances of human rights violations guaranteed by the Covenant, notably flagrant in the areas of the freedom of expression and assembly. We conclude that the government has failed to provide "detailed and sufficient information for clearly understanding how well the rights prescribed in the Covenant have been realized in practice."

Factors and Difficulties in the Implementation of the Covenant

7. The Korean Peninsula has been divided into the Republic of Korea (South Korea) and the Democratic People's Republic of Korea (North Korea) since August 15, 1945. To this date, both Korean governments have claimed to be the only legitimate regime on the Korean Peninsula and have confronted each other as enemies. Under these circumstances, Park Jung-hee staged a military coup under the pretext of national security and took over political power on May 16, 1961. A self-declared anticommunist, Park suppressed all opposition and ignored the human rights of his opponents. He carried out a policy of economic development driven by the chaebol (Korean conglomerates) and maintained power for over 18 years. After his assassination on October 26, 1979, Chun Doo-hwan and Noh Tae-woo staged a military coup on December 12, 1979. The two suppressed the Kwangju uprising for democracy in May 1980 and continued ruling over dictatorial and suppressive regimes. Consequently,

human rights during this the period were largely ignored.

8. In February 1993, Kim Young-sam was sworn in as president. He was the first elected president without a military background. The establishment of the so-called "civilian government" put an end to the continual succession of one authoritarian military regime after another. This political trend had been the most powerful obstacle impeding the improvement of human rights in Korea. The Korean people expected the "civilian government" to do away with past practices, instill real democracy, and substantially improve the human rights situation. However, Kim had but limited political resources to cleanse the militaristic mentality within his administration, as his power base was the New Korea Party—a party formed in coalition with power groups behind past military regimes. In December 1997, the opposition party led by Kim Dae-jung gained victory in the presidential election. This was the first real change of leadership in the history of Korean politics. Particularly because Kim Dae-jung promised the protection of human rights as part of his platform, there were high expectations for the administration's full implementation of the Covenant. However, most obstacles created by past military regimes have remained during the "civilian government" as well as Kim's first year in office.

9. Under the so-called "civilian government" (Kim Young Sam Administration) and the present government, the most important factor and obstacle to the fulfillment of the Covenant has been the division of Korean peninsula. In October 1991, South and North Korea joined the UN simultaneously and ratified "the Agreement on Cooperation over Reconciliation, Inviolability and Communication between North Korea and South Korea" on February 18, 1992. However, the South Korean government continues to restrict people's freedom and rights on the grounds that North Korea is an "anti-state organization" and that "any activity advantageous to an anti-state group is punishable" according to Article 3 of the Constitution and the National Security Law. With the death of Kim Il-Sung on July 8, 1994, many NGOs held the view that it would be desirable to send a South Korean delegation to the funeral service as a gesture toward national reunification. However, the government designated Kim Il-sung as a war criminal and strongly opposed the NGOs' views. The relationship between the North and South grew extremely tense because the South Korean government punished those who insisted on a call of condolence. Thereafter the government took a hard line toward North Korea until the regime changed, leaving the negotiations between the two governments at a standstill. The government also arrested and punished a great number of dissidents

under the National Security Law; an outright violation of the freedoms and rights enshrined in the Covenant. On the other hand, the present administration has carried out the "Sunshine policy", a policy of appeasement, and has improved its relationship with North Korea. Nevertheless, the abuse of the National Security Law under the pretext of national security has persisted. Furthermore, offenders of the law were not dealt with by the ordinary police, but by the secret police such as the National Security Planning Agency (recently renamed the National Intelligence Service), the anti-Communist section of the Office of the Police, and the Headquarters of Military Secret Affairs. The practices of the secret police have been an obstacle to human rights protection due to the numerous violations committed by the police, including torture..

10. Another obstacle to fulfilling the Covenant is light punishment and impunity given to those who violated human rights under past military regimes. When the "civilian government" was established Korean people demanded that the government punish the major players in the military coup as well as participants in inhumane acts under the military governments. They also asked that the government provide proper compensation to the victims whose human rights had been violated. Above all, victims of the military coup in 1979 (the so-called "12. 12 coup") and those of the May 18 Kwangju massacre of 1980 called for punishment of the coup's major players, including the two former presidents. However, in October 1994, the prosecution suspended indictment, and on July 18, 1995, decided that there was no right of arraignment on the Kwangju massacre, based on the bizarre principle that "successful treason cannot be punished." However, the prosecutors' attitude induced nationwide resistance, leading the government to charge the major players with treason in accordance with the Penal Code. On April 17, 1997 the Supreme Court sentenced Chun Doo-hwan to life imprisonment and Noh Tae-woo to imprisonment for 17 years. However, on December 22, 1997, only 8 months after the Supreme Court's ruling, the government pardoned them. Such acquittal has made futile all efforts to reform old practices.

11. In addition, the government does not attempt to examine the numerous cases of human rights violations, such as questionable deaths, disappearances, and torture under the military governments. Hence, there has been no proper punishment of offenders or compensation for victims. Furthermore, the government is passive in the punishment of

the officers involved and the compensation of victims related to past as well as present cases of human rights violations. For example, many people have accused and sued officers of investigation agencies or prison guards on the grounds of torture and other inhuman treatments. Nevertheless, the government is showing little concern for such investigation and prosecution. Even if punished, these officers are generally given light sentences compared to ordinary criminal offenders. Lee Geun Ahn, an officer accused of torture, has been wanted for over 10 years. There is suspicion that he is under the protection of the government. This government's attitude generates the perception among law enforcement officers in charge that the violation of human rights is not a serious offense, which is the reason why these violations have not significantly decreased. As a presidential campaign pledge in 1998, President Kim Dae-Jung promised to establish a national human rights institution focusing on the remedies of human rights violations and the provision of human rights education. After the inauguration of the present government, the Ministry of Justice has drafted an act on human rights, which is to be discussed in the national assembly. However, human rights NGOs harshly criticized the draft for the lack of discussion between NGOs and the Ministry of Justice in the drafting process, and that the body is likely to be held under the control of the ministry rather than serve as an independent institution. Since the institution's efficacy is questionable, the present government has received the criticism that it will only be setting up a nominal national body on human rights issues.

12. Furthermore, important legislation in Korea is often the product of legislative bodies established by the military regime rather than a product of the democratically elected National Assembly. In addition, much of these laws have been enacted and amended by ruling parties without the endorsement of opposition parties. Most of these laws, created without any input from the public, are closely related to human rights. These bills are obstacles to the establishment of a strong constitutional state because they are often so ambiguous that the government and courts are able to interpret them arbitrarily.

13. The military regimes used economic development as well as national security to justify the takeover and the maintenance of their political power. As the government carried out its Chaebol-centered economic policy, workers were left with low wages and

long hours. In addition, workers' right to organize unions and the right to strike have been excessively restricted in Korea. As the labor movement has been associated with engaging in communist activities or in supporting North Korea, it has been severely suppressed through the National Security Law, the Law on Assembly and Demonstration and other labor-related acts and ordinances. No significant changes in such repression have taken place under the "civilian" nor the present government. Since the 1998 IMF bail-out, workers have been laid off and dismissed in the restructuring process. The workers' protest against the restructuring process has only resulted in the mass arrest of workers.

14. Another obstacle is low awareness of human rights by law enforcement officials and by ordinary citizens due to the lack of human rights education programs. As mentioned above, law enforcement officials' awareness has been very low due to the aforementioned succession of authoritarian and suppressive regimes. Attempts by citizens to protect their rights and improve awareness of human rights were regarded as objections to the regime, and in extreme cases led to severe punishment. It is impossible in such situations to enhance people's awareness of human rights. Therefore, including human rights education programs in the school curricula and publicizing the Covenant are measures necessary in improving the awareness of a populations that has been forced to remain silent for years. Military regimes have now collapsed, but there is no visible effort for change by the government.

Relationship between the Covenant and Domestic Law

15. The government report states the following; "article 6, paragraph 1 of the Constitution stipulates 'treaties and international law concluded and ratified according to the Constitution are as valid as the domestic laws of the Republic of Korea.' As the Covenant was ratified and promulgated by the government in consent with the National Assembly, the Covenant has the same effect as domestic law without any national incorporation process". Accordingly, the administration and the court are obliged to observe the Covenant when exercising their powers. The government report also states that "in the event that a law enacted prior to the Covenant's ratification is in conflict with the provisions of the Covenant, the Covenant shall be superior to domestic laws." In relation to the question of legislation enacted after the signing of the Covenant, the report claims that "no law passed in the Republic of Korea may encroach upon the rights outlined in the Covenant. Any such law will be deemed unconstitutional."

However, a problem still remains. If a new law violating the Covenant's provisions is passed, which one (the Covenant or the domestic law) takes precedence until the Constitutional Court declares it unconstitutional? On February 10, 1996, the government submitted its first report to the Committee against Torture stating that "when conflicts between domestic law and the Convention arise, the *lex posteriori* rule and the principle of the precedence of special law shall be applied." Hence, the government's view makes it unclear whether the Covenant shall be superior to domestic law, or whether the *lex posteriori* rule or the principle of the precedence of special law shall be applied in the case of a conflict.

16. The government has ignored the provision of remedies for individual communications filed based on the Covenant's optional protocol. The Committee has repeatedly requested that the government must provide proper remedies for victims whose human rights have been violated, but the government has ignored the requests until now. Examples are as follows;

17. In February 1991, Mr. Sohn Chong-kyu(Communication No. 518/1992), former union president of Kumho Ltd. who participated in a conference on Unions' solidarity, was arrested by police. When workers of the Daewoo Shipping Co. went on strike, he criticized the government for ordering the police force into the strike. He was charged with the violation of the prohibition of third party intervention regulated in article 13 paragraph 2 of the Law on Labor Disputes and the Law on Assembly and Association. In August 1991, he was sentenced to one year and six months' imprisonment with three years' probation at the Seoul district court. He subsequently filed a communication to the Human Rights Committee in July 1992, because the judgement on his case violated his freedom of expression provided in article 19 paragraph 2 of the Covenant; on August 3, 1995, the committee decided that the punishment against Mr. Sohn was in violation of the Covenant and the government shall be responsible for redemption including proper compensation under article 2 paragraph 3(b) of the Covenant.
Despite such decision made by the committee, the government has not taken any action for redeeming Mr. Sohn. He sued the government for compensation, but his lawsuits were rejected by both the trial and appeal court. Recently, the Supreme Court finally ruled against Mr. Sohn's request. It judged "the punishment against Mr. Sohn does not constitute violation of freedom of expression provided in article 19 of the international covenant." Furthermore, it stated that Paragraph 3 of Article 2 of the covenant is to prescribe international obligation of state parties to provide remedies for individual

victims, but not to prescribe direct, individual compensation. This case shows that Korean courts do not recognize the covenant as a self-executing treaty and they require domestic laws to implement the state's obligation.

18. Mr. Park Tae-hoon joined the Young Korean United (YKU), formed by Korean-American youth living in the US in order to improve the social status of Korean-Americans and to support the democratic movement in South Korea. When he returned to South Korea to do military service, he was arrested. He was indicted and found guilty in violation of the National Security Law (NSL) on the grounds of involvement with an organization supportive of the enemy. When the Supreme Court reviewed this case, Mr. Park's legal counsel presented the Committee's recommendations on the NSL to the court, issued at the review session of the Korean government's initial report. However, the Supreme Court ignored them and judged "even though the Human Rights committee points out problems of the NSL, the law shall not be ineffective just because of that reason. Therefore, to punish the defendant under the NSL is not to violate the Covenant, nor are laws unfairly applied."
August 8, 1995, Mr. Park claimed that the Korean Supreme Court's decision violates article 18, paragraph 1; article 19, paragraph 1 & 2; and article 26. He filed a suit against the Committee (Communication No. 628/1995 dated August 8, 1995). On October 20, 1998, the Committee decided that the judgment of the Korean Courts violates article 19 of the Covenant, and thus that the Korean government must take measures for the provision of effective and practical redemption including appropriate compensation to Mr. Park. However, the government has not redeemed him, as has been the case with Mr. Sohn.

19. The government has failed to inform the public on the Covenant's provisions since its ratification. In addition, law enforcement officials of investigation agencies and courts are unlikely to have sufficient knowledge of the Covenant. In 1997 the Judicial Research and Training Institute (an educational establishment for trainees who have passed the bar examination) established the first lecture course on international human rights law. However, it still remains an elective course taken by only a small portion of the student body. Due to insufficient enrollment, the course was cancelled in 1998.

PART II

Remedies for Violation of Rights

<Article 2>

20. The first government report mentioned the following as remedies for persons whose rights were infringed under the laws of the Republic of Korea: ① remedy through indictment and the investigation of the violation, ② remedy through trial in court, ③ remedy through constitutional petition and/or the Constitutional Court's review of its constitutionality. With concrete proof and specific examples outlined in the previous counter-report, we contended the claim that these methods guarantee the restitution of civil rights. The government's second report, however, did not reply to our rebuttal. It merely touched upon some issues concerning the role of the Constitutional Court and did not address other measures of relief.

21. However, we again raised the question of whether the criminal investigation agencies in Korea have fulfilled their role in protecting civil rights. First, we cannot expect these institutions to act in a politically neutral position, since the criminal investigation officials in Korea, i.e. the chief of police, prosecutors and agents of the National Intelligence Service (successor to the National Security Planning Agency) have been assigned and promoted by the President. Since the Human Rights Committee's revision of the Korean government's report in 1992, the government has twice changed its leadership. Kim Young Sam's government and Kim Dae Jung's government called themselves the civilian government and the People's government respectively, trying to distinguish themselves from their predecessors . However, they have been criticized for the political nature of their appointments to these criminal investigation agencies. The personnel seems to be composed of those in their own power circle or those with important regional ties, thus suiting their power interests.

22. The result of such personnel appointments has been that investigations served the intentions of the power in office. That is, the police and the prosecution have held absolute power in times of political crises, focusing their efforts in concealing the truth or even refusing to initiate investigation that could possibly disgrace the government.

23. For example, with regard to the 12.12 crisis in 1979 (a coup led by Chun Doo Hwan,

then commander of the security force) and the 5.18 democratic movement in 1980 (relentlessly suppressed by the military and resulted in hundreds of deaths) the Korean public demanded the punishment of the two former presidents. However, prosecutors insisted that they could not punish them since the coup had been successful, only to change their attitude when Kim Young Sam, ex-president, decided to investigate these cases. He investigated and even indicted them. In addition, the conglomerate Hanbo's bankruptcy in 1997 and the resulting investigation of its CEO and related corruption case raised suspicions of a cover-up, particularly due to the close political connections between the parties involved.

24. Due to this kind of political inclination, many people still use the expression "the maid of power" to describe these investigation agencies, frequently referring to the establishment of an independent counsel or 'special prosecutor' as a way to deal with the problem. The opposition party and media always propose the introduction of a special prosecutor in every case suspected of involving political involvement of the highest powers, meaning there is little expectation that such cases will result in fair investigations.

25. Meanwhile, the police, prosecution and the National Intelligence Service have harshly oppressed those who voice criticism against the current authorities. This fact is evident in that the number of National Security Law offenders has not decreased under the "civilian government" or the "people's government".

26. In addition, we pointed out in the last counter report to the first government report that Korean investigation agencies had handled cases unfairly based on personal acquaintance and bribery. This fact is one of deep-rooted evils of Korea investigation agencies that continue to exist. In 1997, prosecutors nationwide disclosed a total of 54 corruption cases linked to judicial police officers receiving bribes. However, this number may be just the tip of the iceberg.

27. Even though it has contributed much to the improvement of the Korean human rights situation, the Constitutional Court needs to deal with many institutional problems. First, its decision making process has not been transparent. Although it has the authority to rule on the constitutionality of legislation, it fails to provide the administration and other courts with a concrete decision-making criteria due to its highly ambiguous judgments. In some cases, the Supreme Court ignores judgments made by the

Constitutional Court. The Supreme Court maintains that it has authority in the interpretation and the application of statutes that have already been ruled upon by the Constitutional Court. As a result, people who have authorized to receive remedies from the Constitutional Court sometimes cannot receive the compensation owed them by law.

28. In addition, the Constitutional Court has shown a passive attitude towards the remedy of human rights violations. In September 1995, the Court had dealt with a total of 2,108 cases since its founding. Out of these, 1,075 cases were immediately rejected at the pre-review stage due to the reason that they had not met the proper procedural requirements of a petition. 382 cases among them were automatically rejected due to the reason that they had not secured the services of a lawyer (Court-appointed attorney system has not been properly implemented). In terms of petitions against the decisions not to prosecute, only 3% out of 1,135 cases received had been the proper remedy to their rights, thus bringing in criticism that it has not performed its intended role of rectifying the prosecution's wrongdoing.
The Constitutional Court has failed in most cases to observe the prescription of the 180 days review period set by the Statue to ensure the prompt remedy of violations. Court decision usually takes more than a year in most cases, and in some cases, more than three years. As the nation's Constitutional Court, it is unacceptable that the most politically oriented cases have remained unresolved for a long time.

Independence of the judiciary and right to fair trial

<Article 2 and 14>

29. It cannot be denied that judicial authority has gained greater independence since the civilian government replaced the military regime. However, it is difficult for the judiciary to isolate itself from power politics. This, in part, is attributable to the fact that judicial officers who catered to the wishes of past military authorities still remain in high positions of the judiciary.

30. Although only three classifications (Chief of Justice of the Supreme Court, justice of the Supreme Court and judge) exist in the Constitution, there is an internal hierarchy based on such titles as normal judge, senior judge of district court, senior judge of high court, chief of district court and chief of high court. This hierarchy establishes a predictable course of promotions and appointments. In March 1997, Supreme Court

decided not to reappoint Judge Bang Heesun. He had accused 5 policemen of arresting a suspect despite his rejection of the arrest warrant. After receiving unfair treatment from his superiors, he submitted a constitutional petition to the Constitutional Court. This case has been recognized as an example of structure of the court interfering with the independent decision of the judge. In addition, with regard to one judicial apprentice who had been found guilty of violation of the National Security Law, but reinstated by the pardon and requested the judge appointment, the court rejected the judge appointment even though he was not legally qualified.

31. The government report argues that it appoints judges of military court among military attorneys who have equivalent qualification to lawyers of civilian courts. The government's claim is untrue. According to article 22, paragraph 2 of the Law of Military Courts, the military court consists of is differ from the truth since judges of military courts shall consist of a military judge and judge and general officers chief judge shall be a senior in rank, and the senior shall be appointed among general officers in accordance with. This is believed to be in violation of the purport of Constitution which specifies that all the people have the right to receive lawful trial governed by judge appointed in accordance with the Constitution and law.

32. The principle of open trial not only means that trial shall not be held in a place isolated from the general public, but also includes the principle of oral trial that judgments shall be based on the verification formed by the contents of what the defendant orally asserts. However, the current state of court trial in Korea is such that with the exception of witness testimonies, all other legal debate and the investigation of proof occur outside of the court. The court trial is usually just a formal proceeding for the submission of papers prepared outside of the court. The excuse is that this situation is the result of the excessive workload of the judiciary. However, no reforms have taken place, such as increasing the number of judges.

33. Korea has only paid lip service to the principle of the presumption of innocence. The arrested suspect or the accused are treated in the same way as someone who has already received the 'guilty as charged' verdict. They are often brought before the court, hands tied with a rope or in handcuffs, wearing prison uniforms. The Special Act on the Punishment Against Felony Cases specifies that the court can order the detention of suspects considered to be inclined to violence or to attempts of escape. Under the

Forged Check Control Law, the court can order a 'provisional decision' that requires the accused to pay in advance the fine associated with the crime. In addition, that law specifies that the defendant should remain detained until he pays the fine even in case of a suspension in the announcement or execution of the sentence. In Korea, summary indictment to court is established as a practice in case the prosecutor requests the fine from the defendant. In this case, the prosecutor demands that he/she pay the fine in advance, and in some cases will only allow summary indictment based on the condition that he/she pays the fine in advance.

34. In Korea defense attorneys have the right to copy documents related to the lawsuit, but the defendants do not have such rights and are only allowed to read the records of the court proceedings. Considering the shortage of attorneys and exorbitant legal fees, this is a severe restriction on the individual's right to defense.

35. Furthermore, even defense attorneys cannot read or copy the investigation records before they are submitted to court. Accordingly, the suspect under investigation does not have access to the records brought to court. In response to this, the Constitutional Court has recently rendered a decision (November 27, 1997) which seems to assure, in part, the right to read and copy the investigation records. The Court ruled that the right to read and copy is allowed should it be considered important in the defense of the accused. This is determined after considering the nature of the case, the type and content of the evidence, and after the assurance that there is no possibility of the following; leakage of national secret, the destruction of evidence, threat on witnesses, the infringement of privacy and severe damage on relevant investigation. However, investigation agencies in practice have not allowed the right to read or copy the investigation record, based on the vague reasons specified above.

36. Article 14 para. 3 of the Covenant prescribes that the hearsay rule has to be applied to secure the impartial trial for the accused. But in Korea, a wide range of exceptions to the hearsay rule has been accepted. Judges tend to favor the records of witnesses written by investigation agencies rather than statements obtained from the prosecution's direct questioning.

37. According to the Criminal Procedure Code, the hearsay rule may not be applied if the witness cannot present himself for direct questioning because of "death, disease or other appropriate reasons", or when the statement of record has been written under

credible situations. However, courts in Korea set the scope of this regulation too widely and apply it in cases where the witness cannot be located.

38. The statement or the record obtained during an investigation has less value as evidence than statements from direct questioning in trial, because it is often made in a coercive environment where investigation agencies intimidate the witness out of testifying. The courts generally accept the statements as having greater credibility than testimony in court. Whether or not a defendant is guilty is often concluded during the investigation process, the trial acting as nothing more than a formal confirmation of a judgment already made. This is evident by the fact that out of all criminal cases brought to trial, less than 1% received the "not guilty" verdict.

39. The confession of an accomplice in front of the prosecutor is considered absolute evidence. Even if he states the opposite in the presence of a judge, the confession made to the investigation agency can be used as evidence against the accused. This leads to a situation in which the accused is found guilty even with the truthful testimony of the accomplice in court, because of a previous confession made under coercion and in long-term detention without an interview with a lawyer.

40. It is true in principle that the accused or the suspect will not be forced to testify against himself. But looking at the reality of the investigation process, this is not true. Investigation agencies arrest the suspect with the purpose of getting a confession. It confines the suspect in the policy custody or the detention center for 10 or 20 days. Investigators put the suspect in a small investigation room, prohibit outside contact and question him/her with threats, intentionally leading the suspect into confession.

41. The confession record achieved through the above process is considered the "King of Testimony" and plays a strong role in the criminal trial as absolute evidence. Once a confession record has been made, it is very difficult to deny its credibility. This is from the assumption that "a man never confesses if he does not commit a crime." Judges also have a close working relationship with investigators and prosecutors, and are more inclined to distrust the suspect. According to a Supreme Court precedent, the court can find the suspect guilty if supplementary evidence is submitted concerning even one part of the charge. Consequently, investigation agencies try their best to get a confession from the suspect.

Right to a Defense Counsel

<Article 9(2), 14(3)(b),(d)>

42. Compared to the period of military dictatorship, it is true that it is easier now to request an interview with a counsel. However, such requests have often been rejected by investigation agencies. Especially in cases of political offense such as the National Security Law Offense, it has been rejected quite frequently.

43. Around November in 1995, attorney Jae-myung Lee of the Suwon Bar Association applied for an interview to the National Security Planning Agency. The receiving person said, "We need an approval from a superior. Unfortunately the person in charge is in a meeting, so you should wait to have an interview." Some time later, the same person said, "The person in charge is out and we cannot contact him. I am afraid that you should wait until the afternoon." Consequently, he was not granted an interview. Around July 1996, attorney Han-soo Kim of the Seoul Bar Association applied for an interview with Soo-il Jung (Muhamad Kansoo), who had been questioned by the NSPA for espionage. The Agency rejected the request and said, "Professor Kansoo is a suspect held under grave charges and is unlike other National Security Law offenders. We cannot allow him to interview with his counsel for reasons of national security." Around February in 1996, Attorney Won-il Kim of the Suwon Bar Association applied for an interview with the suspect who had been taken to the police station in the form of voluntary presence. They rejected the request saying, "It is very difficult to allow the interview because the case is still under investigation." There are so many rejected cases other than the above examples. They have rejected interview applications claiming that the interview might interfere with the investigation.

44. But the suspect shall be entitled to communicate and consult with his legal counsel. The communication shall be allowed for the preparation for the defense. The period when the suspect needs the counsel the most is precisely the period of questioning by the investigation agencies. The right to counsel is clearly violated when an investigation agency rejects the request for an interview based on the reason that the case is under investigation or the case is about to enter into investigation.

45. The cases of violation of the right to legal counsel are not limited to the above. Interviews with legal counsel are interfered with or delayed in various ways or not guaranteed confidentiality. Most of political offense investigations are being conducted

at the NSPA or the Special Security Bureau of Police. These investigation agencies tend to detain the suspect in a place different from that specified in the warrant (most judges designate the police station as detention places). This system is designed to interfere with the counsel's interview. When the counsel requests an interview, these institutions claim that they have already finished investigating and have returned the suspect to custody (police station). When the counsel goes to the police station, he is informed that the suspect has not been handed over.

46. In some cases, investigators interfere with the interview process by presenting themselves at the interview or stationing themselves nearby. In July 1997, Ji-hoon Cha of the Seoul Bar Association was interviewing a suspect at the Security Investigation Unit of the Seoul district Police Bureau, when investigators presented themselves at the interview. He opposed such an intrusion, but they forced themselves in. When interviews are conducted in the Anti-Communist Branch Office, they usually take place in the cafeteria. There are always employees present in the cafeteria as well as policemen who come in to use the facility. This obviously makes respecting confidentiality impossible. Besides the Special Security Unit, some police stations and police bureaus do not have a separate room where the counsel can conduct his/her interview. The principle of confidentiality during an interview is naturally violated when the interview takes place in the investigators' room.

47. In Korea, a legal counsel cannot be present when the suspect is being questioned by investigators. Although many legal scholars support the participation of lawyers during interrogation, this view is not recognized by the court or other public institutions. The Criminal Procedure Code contains no such regulation. It is thus solely up to the investigator himself whether or not he will allow the counsel to participate in the investigation. There is a judicial precedent that rejected investigation records as evidence because the investigator had not informed the suspect of his right to legal counsel. But there is not a single precedent that rejects such records as evidence because investigators had rejected the lawyer's application for participation during interrogation. There are also no precedents demonstrating that the rejection of a counsel's request for participation during interrogation violates the Constitution or the Criminal Procedure Code.

48. The Basic Principles on the Role of Lawyers (passed at the 8th UN Congress on Crime Prevention and Treatment of Prisoners) elaborates on the right to legal counsel

outlined in article 14 para. 3(b) and (d) of the ICCPR. It prescribes that people shall be entitled to a legal counsel to be protected in all stages of criminal proceedings. "In all stages of criminal proceedings" includes all stages of the investigation, particularly the process of interrogation by investigators.

49. Thus, prohibiting the legal counsel from participating in the interrogation by investigators is against international human rights law as well as article 14 of the ICCPR. It is the right of the suspect to ask that his counsel participate in the interrogation process. The investigation agencies should guarantee participation and stop the interrogation if the suspect asks his counsel to be present. The record obtained without participation of the counsel should be denied as evidence.

Legal Aid in Criminal Cases

50. Korea has adopted a court-appointed counsel system to secure the right to assistance by a legal counsel. However, the pay is less than an average of $100 for the appointed counsels. As mentioned in the previous report, there is a tendency among court-appointed lawyers not to give these cases their full attention.

51. Furthermore, the right to be helped by a legal counsel free of charge should be secured "in all stages of the criminal proceedings" according to "Basic Principles on the Role of Lawyers", the detailed elaboration of 14.3(d) of the ICCPR. In Korea, however, the suspect can use a court-appointed counsel only after the prosecution has indicted the suspect. The Korean criminal procedure has been aggravated in terms of court-centered trial and become formality. Thus, the suspect should have the right to be helped by a legal counsel from the early stages of the investigation.

52. In order to make up for the deficient court-appointed counsel system, each district Bar Association has been operating a duty lawyer system. Under the duty lawyer system, the duty lawyer provides services to detainees who can contact the Duty Lawyers' operation center. This help system is run by Bar Associations on a voluntary and pro bono basis. The weakness of this system is that it relies entirely on the voluntary services of lawyers. Investigation agencies are very passive in letting suspects know of their right to use such a system.

PART III

Right to Life

<article 6>

Arbitrary Use of Weapons by the Police

53. The government report states "the use of firearms is severely restricted in order to prevent the potential deprivation of lives by arbitrary use of weapons by police officers. Police officers may not harm persons by use of firearms except in cases discussed in Article 11 of the Police Officer Duty Performance Act". In reality, however, police officers have continued the overuse and misuse of guns against demonstrations and in the arrest of criminals, leading to many casualties. At 21:02 on March 18, 1997, an unidentified man in his twenties was questioned by the police in a residential area. He refused to oblige and ran away, but was shot by the police and taken to a hospital where he died soon after. On November 21st, 1996, police fired at a man named Yoo for hit-and-run. He had his thigh shot through and died the next day. On September 10th, 1996, police who attempted to catch a reckless driver shot the adolescent, Moon, in the head with a bullet, which blasted in front of his eyes, causing a deep cut and a second degree burn. Despite the recurrent accidents, the police authorities have sought to revise relevant laws and regulations to make it easier to use guns. The Police Bureau is reportedly pushing for a revision of laws to ease regulations on the use of guns, so that policemen can resort to guns more freely without fueling a debate on legal issues. Furthermore, the Bureau sent an official guideline concerning this matter, stating that "no police officer will be held accountable for small mistakes he/she makes in bringing those threatening government authority under control". In 1997 there were 295 cases of the use of weapons. This rate has rapidly increased. There were 279 cases from January to August of 1998. (Source: 1998 Parliamentary Inspection of the Administration)

Death Penalty

54. The government argues in its report that the Act Concerning Aggravated Punishment for Specified Crimes and the Act Concerning Aggravated Punishment for Specified Economic Crimes were revised on December 31, 1990, to remove the death

penalty from 15 clauses including crimes of bribery, evasion of customs duties, etc. The revised Criminal Code, promulgated on 29 December 1995, has deleted the death penalty from five clauses; intrusion in to residential structures leading to death or injury, obstruction of public traffic causing death or injury, and death resulting from robbery." However, as mentioned in our previous report, death sentences related to a wide range of crimes are still executed. The Criminal Code provides for the death penalty in 15 provisions including high treason, espionage and murder; the Military Criminal Code in 45 acts and the National Security Law in more than 50 acts. Also the Special Criminal Code such as the Act Concerning Aggravated Punishment for Specified Crimes still provides for the death penalty. Article 93 of the Criminal Procedure Code prescribes the death penalty without any other option. In executing such a wide range of death sentences goes against Article 6 (2) of the Covenant, which limits the penalty to "extremely grave and heinous crimes".

55. KNCC Human Rights Committee's Sub-committee on Abolition of Death Penalty sent a petition to the President on April 4, 1994, requesting the abolishment of capital punishment in Korea. In particular, the Sub-committee called for a ban on execution after Easter, and also a fundamental resolution of the death penalty problem in Korea. On April 18, 1994, Amnesty Korea sent a letter to the President in support of the abolition. The letter, signed by 464 persons, contended that the Korean death penalty system violates the right to life stipulated in Article 1 of Universal Declaration on Human Rights. In a reply to the KNCC on April 19, 1994, the Korean government stated that "it is premature to abolish the death sentence as the Korean society is in favor of it as a punishment", whereas to Amnesty Korea on May 04, 1994, the government vaguely responded that "abolishment will be considered with a long-term perspective." According to Amnesty International, the number of death row inmates in Korea as of May 1994 stood at 50. On October 6, 1994, the Korean government executed 15 inmates including Cho Hyun-Chul, who was sentenced to death for burglary and murder. The Council for the Abolition of the Death Penalty in Korea (A.D. Penalty Korea) criticized this by saying that "heinous crimes can be only be rooted out by a preventative approach and never by capital punishment." Furthermore, Amnesty Korea commented that "the government is ignoring its responsibilities and abusing public sentiment on social crimes to execute prisoners".

The government put to death 19 prisoners including Kim Ki-Hwan and five other members of Jijon - an infamous crime organization - on November 2, 1995. Despite strong opposition from human rights NGOs such as Amnesty Korea and the Catholic

Human Rights Committee, the government executed 10 death sentences on December 30, 1997.

Other threats to right to life

56. In 1997, the Korean government cracked down on Hanchonryon - the nationwide body of student councils- for its anti-government activities. The government suppressed rallies and demonstrations and also arrested students on the run, resulting in the death of students and policemen. A core member of Hanchonryon died while trying to escape arrest.

- March 20, 1997: students demonstrated in front of the Chosun University Gate in Kwangju, where Ryu Jae-Eul, a participating student lost consciousness at 13:55 and was moved to the University hospital but died at 15:30.
- September 16, 1997: police raided Chung-Am Apartment 1308 in Buk-Gu, Kwangju to arrest Kim Joon-Bae, an executive member of Hanchonryun. At 00:10, Kim fell from the building balcony in an attempt to escape arrest and died.
- February 02, 1997: Min Byung-Il, a core member of Shingal Evacuee's Committee in Yong-In city was taken to police custody at the Shingal branch of the Yongin Police Station. A row broke out shortly after, developing into a scuffle. Min was badly beaten and taken to Namsuwon Hospital, where he was declared brain dead.
- July 25, 1997: Park Soon-Duck was one of the demonstrators protesting against the government's decision to remove poor residents from the Junong 3-Dong area for the sake of re-development. Subcontractors hired to force the residents out deliberately started a fire, forcing a stampede out of demonstrators. Critically injured and died at Kyung-Hee University Hospital on July 26.

57. Around 00:10 on October 31, 1994 Choi Tae-ho, a second-rate guard belonging to quarter 6 of Andong Prison was found dead 16 days after he began his post. His family has questioned his death—he had been tied with a rope with severe bruises all over his body. Although the prison initially claimed that he had committed suicide by hanging himself with his shoelaces, the prison has prevented his family and journalists from approaching and interviewing witnesses and related people. Therefore, it is suspected that it was homicide. On November 18, 1994 a second autopsy conducted by the Medical School of Kyong-Buk National University submitted new evidence such as hypodermal bleeding as well as bruises on his chest

58. On February 14, 1995, Park Jung-ho, the body of a junior was found in a beach 500m away from where he was arrested. This was 10 days after the southern branch of the Soh-Kwi-Po Police in Cheju-do arrested him under suspicion of the use of violence. His family suspects his death, because policemen pretended to make a phone call and ran away when his family protested them for clarifying the cause of his death.

59. On November 28, 1995 around 10:30 Lee In-duk, a handicapped person was found on the seashore about 20-30 meters apart from the set up for a protest against pulling down street stalls. The Inchon City Hall had forced to remove the stalls from A-arm-do, Ok-ryun-dong, Yonsoo-ku, Inchon. His body was put in the Chong-ang-kil hospital's mortuary to clarify the cause of his death, but police stole it by force. The policemen attacked those who protested the confiscation of the body. The autopsy carried out by the police indicated the cause of death as suicide by drowning.

60. Korea is the only country in the world that remains divided. Although the worldwide trend is moving towards defense budget cuts with the end of the cold war, weapons of mass destruction still exist in great numbers, ready to take lives any time. The Anti-personnel land mine (APL) is one of them. The APL has been greatly reduced in the number of uses worldwide, thanks to the efforts of International Campaign to Ban Landmines. Despite such downward trends, there are difficulties in removing them from the Korean peninsula before the two Koreas are reunited, as the U.S. maintains a strong view on this issue. According to MSNBC`s internet news report on August 25, 1997, the U.S. has deployed some one million silent land mines in Korea's DMZ area alone to counter North Korea's military aggression. The Korean government claims that there has never been civilian casualties, but the Korea Campaign to Ban land mines(KCBL) conducted an on-site surveillance in Paekryung-Gun, Yunchun-Gun of Kyung-gi Province, as well as Chulwon and Yangoo of Kangwon Province. The KCBL estimated in August 25, 1997 that about 1,000 victims have suffered from land mind blasts since the Korean War, with at least thiry survivors by 1997. A case in point is Shin, a man known by his family name only, who lost his toes by accidentally stepping on a land mine in Se-u Island, Inchon, in August 1998. Land mines scattered around Kangwha Island during mid-80's has caused the residents great distress during floods.

Prohibition of Torture and the Right to Liberty and Security of Person

<Article 7 and 9>

61. The government argues in its report that torture and other forms of inhumane treatment are strictly prohibited under the domestic legal framework, including the Constitution, Criminal Code, the Criminal Procedure Code and other relevant laws. In the execution of these laws, however, torture and other inhumane treatment still occur. The number of accusations and prosecutions of violence, confinement and torture undertaken by investigating authorities since 1993 is shown in the following table. Only a fraction of the cases were prosecuted while most of them were dismissed. 41 cases between 1993 and August 1996, and 60 cases between September 1996 and August 1998 were recognized but not indicted by prosecutors.

Number of Torture Cases Filed by Victims

Year	Cases filed	Result							Pending
		Indict-ment	Grace from penalty	No suspi-cion	No autho-rity to Indict-ment	Suspen-sion of indict-ment	Dismi-ssal of Indict-ment	Others	
93.1.1-96.8.31	609	15	41	432	46	32	0	35	8
96.9.1-98.8.31	744	14	60	420	0	15	62	148	25

(National Inspection Report 1997 & 98)

62. It is the National Security Law that is the most formidable obstacle to the protection and improvement of Korean human rights. According to the Criminal Procedure Code, judicial policemen are able to detain suspects for a maximum of 10 days and prosecutors for an additional 20 days. Therefore, the duration for authorities to detain suspects totals up to 30 days. Moreover, the National Security Law allows the authorities to detain suspects for a longer period: judicial policemen are able to detain national security related suspects for up to 20 days and prosecutors up to 30 days, which is totally 20 days longer than those of ordinary suspects. In cases related to the infringement of the National Security Law where suspects may be detained for a maximum of 50 days, it is very difficult for detainees to maintain physical evidence and present proof of the torture. Article 9 (3) of the Covenant discusses the duty bring a detainee to trial "within a reasonable time". The period regarded as reasonable was

significantly shorter than the period allowed under the National Security Law. However, this situation has not changed.

63. It is essential that trials be separated from detention centers to prevent investigating authorities from violating detainees' human rights. Nevertheless, suspects held in violation of the National Security Law are arrested by the National Intelligence Center (former National Security Planning Agency) or Security Investigation Division of the Police Bureau. On paper they are detained in police cells, but in reality they are often locked up, having to undergo grueling interrogations in the investigating authorities' trial rooms. Furthermore, detention-monitoring activities by prosecutors is not allowed for these detainees, even though Korean law offers prosecutors the right to monitor investigating authorities' detention centers. There is a high possibility that detainees are tortured, as the suspects have limited rights to an attorney. Nevertheless, suspects who violate the National Security Law, detained especially in the National Intelligence Service (former National Security Planning Agency), have very limited opportunities for interviews. They are often allowed to meet their family only at the final stage of their investigation.

64. Some cases related to torturing people who are suspected of infringing the National Security Law, are illustrated as follows:

- In August 1996 police suppressed the 6th Student's Festival for reunification and arrested participating students affiliated with Hanchonryon. Policemen attacked and abused them, and sexually abused and harassed female students.
- Park Chong-ryol, a vice general-secretary of the National Coalition for Democracy and Unification was arrested by the National Security Planning Agency on November 15, 1995. He was detained and tortured for 22 days. The agency did not allow him to sleep and assaulted him, forcing him to make the false statement that he joined North Korea's Labor Party.
- On June 8, 1995 the Security Investigation Division of the South Cholla Province's Police Office arrested Kim Yong-Jin, an educational officer of "Catholic Worker's House". He made educational materials for workers and thus accused of benefiting North Korea. According to his family, police used severe physical abuse, including sleep deprivation.
- On April 27, 1995 National Security Planning Agency arrested and accused Park Chang-hee, a professor of the Hankook Foreign Language School, of espionage activities contacting North Korean spies affiliated with Cho-chong-ryon – pro-North

Korea group based in Japan. His family claimed that the agency beat him with books and did not allow him sleep. He denied the falsified statement drafted by the agency, to which the prosecutor responded by kicking the man who was handcuffed and tied with a rope.

Torture conducted in ordinary criminal cases

65. Kim Ki-woong was sentenced to imprisonment in his first and second trial, and his final appeal to the Supreme Court was in progress. After his 387 day confinement he was released on December 16, 1993, because the real criminal was arrested. He was actually a policeman arrested and charged with the murder of his girlfriend. He was allowed to sleep for only three hours in three days, experiencing violent threats and appeasements????. Eventually he made a false statement that he had committed such a crime. Although he denied it in the Seoul Police Office after he was transferred, he continued to be threatened and appeased without being allowed to go to sleep for four days. At last, he made the false statement again. This gives a shock to people because even a policeman has to make such false statement by a torture.

66. Three suspects, including Won Chong-song and Ok Hyong-min, accused of kidnapping and murdering Kang Joo-Young, a primary school student in Pusan, were declared not guilty on February 24, 1995. Physical examinations were taken after their 40 day arrest and detention. Even though such a long time had passed, bruises around their wrists by handcuffs and those on other parts of their bodies still remained. They had been tortured, trampled upon, and beaten with bats by investigators while they were handcuffed.

67. The government argues in its report that torture is actually prohibited, referring to the Supreme Court's judgement that confessions made during torture cannot be accepted. However, the court does not show much interest in the appeals of victims who are tortured. In fact, victims have to prove that they are tortured, because the court is inactive in this issue. Therefore, the court largely ignores claims that confession was obtained under torture, unless there are clear physical wounds and scars. On the contrary, the court allows arrested suspects and the defendant to be released through post judicial review of arrest and bail only when they confess their crimes. These practices are abused in order to force suspects to make confessions.

68. The revised Criminal Procedure Code of 1995 provided for a new Warrant Review System under which judges are to examine suspects before issuing arrest warrants. The system was put into effect on January 1, 1997. As the prosecutor's office protested against the new system for obstructing the investigation process, the law was revised again on December 13, 1997, making it conditional on the request of the suspects and their attorneys. The system was weakened as a result, since the judge can freely issue warrants without examination unless specifically requested by the suspect. After reviewing the first government report, however, the Human Rights Commission commented that, "according to Article 9 (3) of the Covenant, anyone arrested must be brought promptly before a judge and the detainee or his relatives should not need to make a special request. The Government should take steps to bring the rules regarding detention into compliance with Article 9 (3)." Therefore, the current system is deemed unsatisfactory for the requirements set forth in Article 9 (3) of the Covenant. Monthly request rates for warrant reviews from January to September of 1998, were 76.7%, 79.3%, 83.3%, 84.5%, 80.8%, 83.9%, 79.8%, 78.2% and 73.3%, respectively. This shows that about 15 ~ 27% suspects are giving up warrant review requests. Such downward trend shows that there is an urgent need for improvement in the system.

Humane Treatment of Inmates

<Article 10>

69. According to the government report, the government insists that a series of prison reforms have guaranteed inmates all rights mentioned in Article 10 of the Covenant, and is close to satisfying "the Standard Minimum Rules for the Treatment of Prisoners (SMR)". In spite of a little improvement, however, prison rules are far from meeting international standards provided by the SMR. This is mostly because the Korean prison system leaves the treatment of inmates not to the specific statutory regulations but to the authorities' discretion. Under these circumstances, orders from the authorities of the institutions are more important than regulations. These orders can also easily change, which makes it difficult to treat inmates in accordance with consistent standards. In this situation it is really difficult to properly supervise prisons and to redress victims whose rights are violated.

70. The Committee expressed at the consideration for the government' initial report that the conditions under which prisoners are being re-educated do not constitute rehabilitation in the normal sense of the term and is an infringement of the provisions of

the Covenant related to the freedom of conscience(CCPR/C/79/Add.6 Para.7 25 Sept. 1992). But despite all the concerns of the Committee, the current situation around prisons is far from significant improvement.

71. Korean penitentiary institutions hold too many inmates. The 39 facilities throughout the country are holding approximately 70,000 inmates at any given time. An average of 1,500-3,000 inmates are held in one facility. Cases of inhumane treatment are reported. According to a survey by the Center for Human Rights and Human Rights Committee of Roman Catholic in 1998, there was a case in which a prison was holding 33 inmates in a small cell of 16.3 square meters. The state-run Korean Criminal Policy Institute reported that the average size of cell per inmate is 1.25 square meters. This high density not only makes it impossible to separate prisoners properly, but is not conducive to reasonable rehabilitation. This is also the main reason that makes the facility inhuman and unhygienic.

72. The poor medical facility and the lack of qualified medical personnel pose serious problems. Inmates have difficulty in seeking a doctor even during an illness. It is especially difficult for inmates to obtain proper treatment having to do with specialized medical fields such as dental problems and gynecological illness. According to the parliamentary inspection in 1997, there are only 60 doctors in 39 facilities throughout the country, which means that each is responsible for 1035 inmates. Taking into account that the poor condition in the facilities increases the chances of illness, the small number of doctors is a serious problem. To make matters worse, the reality is that doctors in prisons are working only during the day, while unqualified prison officials take charge of their responsibilities at night.
Ko Soon Ae, an inmate 8 months into her pregnancy, asked for medical treatment when she felt unusual symptoms. But she was only once allowed a medical examination. She was released from prison four days before she gave birth to a baby who was already dead.

73. Considering the insufficient provision of medical care, treatment provided by outside hospitals is an important alternative. But whether an inmate goes out to get medical treatment depends exclusively upon a superintendent's discretion, which is followed by complicated administrative steps. Many consider outside medical treatment for an inmate to be a special favor. According to the above NGO's survey, only 1.7% of all former inmates questioned, responded that outside medical treatment was easily

permitted.

74. There are unnecessary regulations concerning the inmates' hair style, even though the 1995 amendment of the prison rule allows inmates a certain freedom in managing their hair style. But they are still compelled to keep their hair very short. Furthermore, they are provided only a single outer garment, which makes it hard to do laundry and to get through the cold winter. According to the above NGO's survey, 64.3% of the respondents answered that they felt severe cold because the clothes provided by the authority were too thin. Inmates complain that the food is not sanitary and nutritious enough to keep healthy. 73.9% of the above respondents pointed out the food problem.

Contact with the outside world

75. The 1995 amendment of the prison rule provides inmates with more opportunities for receiving visits and correspondence. But the amendment still leaves visitation rights and correspondence on the discretion of the superintendent. This brings about the superintendent's arbitrary decision forbidding visits and correspondence. Permission for visitation and correspondence can be taken away arbitrarily without informing the inmates of the reason. When interviewing with a person other than a legal counsel, the present rule states that a prison guard shall attend and summarize the interview. This rule infringes on the inmates' privacy and free dialogue with visitors. Also, many cases have been reported in which prison guards strip-searched, before and after receiving visits, on the pretext of preventing the destruction of evidence. For example, in March 1998, the Incheon prison strip searched inmates, who were detained for the violation of National Security Law, before interviews with legal counsels.

Abuse of the disciplinary power and harsh treatment toward inmates

76. The 1995 amendment brought slight progress in the area of discipline for inmates. It prohibited the reduction of diet as a disciplinary measure, criticized as inhuman treatment. However, there seems to be little progress in practice: in some cases inmates were unduly disciplined just because they protested against unjust treatment or reported complaints on prison conditions to the superintendent.
For instance Oct. 23, 1997, an inmate of the Jeonjoo prison, was given solitary confinement for 51 days with his arms, wrists, ankles, and waist tied with handcuffs and chains, for the sole reason that he looked at the eyes of the superintendent and protested

against the informal manner in which he had addressed him.

77. Instruments of restraint, such as handcuffs and ropes that should not be used for discipline are frequently used. Some inmates are put into dark cells where all the windows are covered with acryl. During disciplinary procedure, guards often physically abuse inmates, a practice which is totally ignored by superior officials. This practice is the same as keeping corporal punishment, which is in violation of both international human rights law and national law.
On Jan. 20, 1998, the Supreme Court ruled in favor of compensation for a former inmate who had been disciplined while tied by handcuffs and ropes. But even after the decision, instruments of restraint are still applied as tools for discipline.
On Feb.18, 1998, an inmate who had been sentenced to fine but put in prison because due to failure to pay the fine, died during work. The result of the autopsy showed three broken ribs and brain hemorrhage. There was strong suspicion that he has beaten by either guards or other inmates.
In July 1997, a guard of the Kwangju prison beat a juvenile inmate, Suh, with a stick. While he was under interrogation, he was kept in a solitary cell with his hands bound with handcuffs for one month. After he was moved to a juvenile facility, he suffered such inhumane treatment as having his foot burned with a lighter by a drunken guard. A former inmate who was released on July 25, 1998, disclosed that he was beaten by guards while in the "putting binyo" position, a wooden stick forced between bound arms and legs. He was kept with his hands handcuffed in a dark cell for two months. Even after the disciplinary measure, he was forced to stay handcuffed for six months.

78. Prohibited instruments such as chains, shackles and leather handcuffs etc. are still widely used by prisons. Recently the police and prosecutors have been blamed for using fetters in detaining suspects.

79. Prison rules prescribe that an inmate is entitled to appear before the Disciplinary Committee to make a statement in defense before the discipline is initiated. According to the above NGO survey, however, quite a number of inmates answered that they could not attend the committee. This means that the process is nothing more than an institutional formality. More importantly, there is no process of appeal against illegal or unfair disciplinary measures. Therefore, he has to exercise normal administrative petition or judicial litigation in order to appeal discipline, but they are too much required expertise for inmates to initiate those processes. Although petition to Minster

of Justice is available, it is often hindered by cumbersome process. Many cases show that quite a few inmates were not allowed to write petitions or suffered ill-treatment because of them. In February 1998, a former inmate, Suck-Jin Kim, who had been released from prison following the conviction of the real criminal, sued the government and related officials for compensation. Due to the reason that he caused disturbances, his entire body was tied with to a chain weighing over 20 kg and beaten while handcuffed.

Right to Privacy

<Article 17>

80. The state requires Korean citizens to register such occasions as birth, marriage or death according to the related law or regulations. This is not strange or new, as most countries have similar registration systems. But in Korea there is something called the "Resident Registration". It is composed of inhabitant registration, identification number and the national identification card.

81. First, each citizen must be registered at birth. While the law regulates that registration will be requested by application, it is actually mandatory. If prospective applicants do not apply for registration, they may be fined. Besides this, they will have difficulty in carrying out financial transactions and getting administrative services. The government makes one registration card per person and per household, in which all private records are recorded and managed. The Personal Registration Card records a person's name, sex, date of birth, relationship with the householder, permanent residence, address, previous address, military service records as well as marriage status, blood type, reason of permanent residence change, history of address change, veteran's training history, and anything related to vocational training are recorded. If there is a student, name of guardian, entering and graduating year, reissuing date of national identification card, anything related to education and occupation are registered in detail. On the Household Registration Card the name, sex, date of birth, relationship with the head of a household, permanent residence, address, identification number and address history of each member are kept and managed. Thus, this system is more than just a registration of one's residence.

82. Secondly, the government gives each citizen an identification number at the time of birth. This ID number is used for various purposes throughout one's life as well as after

death. This ID number called the National Identification Number and is composed of 13 digits listing the date of birth, sex and district. If one does not have this ID number, his/her existence is denied. He/she will have difficulties in getting state-provided services or in conducting financial activities. Failing to produce an identification number when asked by the police is considered a great problem. As the number contains the date of birth, age cannot be private in Korea. Consequently, Korean citizens are forced to publicly disclose their date of birth.

83. Thirdly, each citizen is required to get the "National Identification Card" on his/her 17th birthday. According to the Resident Registration Act, one must apply to have it issued. However, the government levies penalties if the prospective applicant does not apply for the card. Without this ID Card, it is impossible to live comfortably in Korean society as it is an essential document of identification. All the citizens are required to submit their finger prints when they get the ID card. The police keeps the finger print data. A photo, name, ID number (including birth date), permanent address, present address, name of householder, issuing date, military services and issuing institute are inscribed on the front of the card. On the back of it, there is a history resident addresses and the finger print of the thumb. The reality is that citizens must carry the card at all times and present it, when asked to do so by the police or by government officials. However, this rule has been nullified by an amendment on December 17, 1997.

84. Personal privacy from the government is fundamentally restricted because every citizen is required to register residence and the change of residence. Every citizen is forced to apply for an ID number and an ID card that he/she must be prepared to present at any time. These laws have been introduced one by one since the Korean War under circumstances in which social security took precedence over human rights. For the reason, most citizens do not realize the serious nature of such restrictions. It was not until the government tried to introduce the electronic ID card (explained below) that citizens, including NGOs, realized the problems of the population registration system.

85. The government stores 78 items (ID number, name, blood type, marriage status, occupation, address, permanent address, education background, householder, telephone number, military services, etc.) in the database called the Resident Registration Computer Network (the Network hereunder). The 78 items were chosen out of 140 items of private information of a 45 million population, collected compulsorily. This database is managed by each local government but directly controlled and managed by

the central government. The Network is composed of 76 CPU's implemented at 15 Computing Head Quarters and connecting 3,700 local offices. It is connected not only to service networks such as the Passport Issuance Network but also the Police Network.

86. Private information leakage happens quite often. The famous example is the murder of Han-young Lee, who defected from North Korea. He had been tightly protected by the security agencies since his defection. He was murdered on February 25, 1997, because his address, listed on the Network, was exposed. The murder suspect asked an Errand Center to find out his address. The Center asked a police officer of information department in Seoul Police Bureau and finally got his address through the Network.

Introduction of New Control Method – the Electronic ID Card

87. The government publicized the plan that it will issue IC card type "Electronic ID card (the Card", or "Smart Card", instead of the existing National Identification Card made of paper and covered with vinyl. To activate this plan, it amended the related law on December 17, 1997.

88. According to the announcement of the government on April 1996, the new ID card will integrate 42 items in 7 fields such as the existing National Identification Card, Medicare Card, Drivers' License, Pension Certificate, Full and Extracted Registration Transcript, Registered Seal Certificate and Finger Prints. This card will be issued to 34 Million people who are over 17. The card will be used for the purpose of identification as well as easy access to the transcript o the information. The government plans to establish a central issuing center connecting the Network with Medicare Network, the Drivers' License Network and the Pension Network. The IC chip to be inserted in the card has an 8bit CPU, uniquely structured ROM & RAM and independent operating system called COS. It can communicate as well. The government claims that this is not against the Constitution and that there is no problem of private information exposure, because the information listed in the Card will not be integrated but stored in each of the separate networks. It claims that the Networks are connected but not integrated and that they will only send and receive information that is absolutely necessary.

89. But NGOs have claimed that the era of electronic dictatorship will begin if the Card is introduced. Objections from NGOs, the academia, and journalists, did not result in the dismissal of the plan, but a slight revision. In the revised draft, the government gave up

the plan of fully synthesizing resident registration information, deciding instead to make only the information on the National Identification Card accessible. The items included residential address history and family information. The "New Korea Party", then ruling party, passed the Draft in the National Assembly in spite of objection from the "New Political People's Association", the opposition party. The revised Act regulated that the Card would be issued starting December 1998.

90. As the revised draft was being handled in National Assembly, the 14th Presidential Election took place. President Kim Dae-joong, who was the candidate of the opposition party, objected to the Card plan. President Kim and the "New Political People's Association," the present ruling party, temporarily suspended the plan in March, 1998. However, due to the lack of firm action by the Executive and opposition from the administration, a plan for the Card's complete dismissal has not been passed, even though it was presented to the National Assembly around January of 1999. The only good news was the announcement of Kim Ki-Jae, the Minister of Internal Affairs, in which he made an official announcement to abandon the Card project. However, the government suspended the project because of financial problems, meaning it may resume at any time when the financial situation permits. Based on the reason it can be easily duplicated, the government is currently implementing a plan to issue a plastic replacement of the ID card. In the process, the public prosecutor's office is digitizing the finger prints of any citizen past the age of 17, without any legal justification.

The limit of the law for the protection of private information held by public institutions

91. The government claims that private information is protected according to the "Act for the Protection of Private Information of Public Institutions". The act includes some general principles related to the protection of private information such as the right of access to private information as well as the right to correct that information. But if we look into what are the practical instruments in protecting private information, we find that they are too weak to protect the information. First, public institutions can construct databases on private information at any time without agreement or permission of other administrative institutions or the National Assembly. Secondly, even though it regulates that the head of the institution holding such private information should not alter the data nor release it to other sources, it does not provide for a penalty should he violate the rule. Thirdly, it sets the scope of the use of private information too widely, since the public

institution can provide or use private information for purposes other than possession. As a result, each administrative institution is virtually free to use the private information file possessed by other administrative organizations.

Excessive Wire-tapping Executed by Investigation Agencies & the Problems of Act on Protection of Communication Secret

92. According to the Act on Protection of Communication Secret established on June 27, 1994, the number of crimes in which wire-tapping is allowed legally, is up to 150. It means tapping is allowed in most criminal cases. The initial tapping period is set as 3 months and can be extended for another 3 months if necessary. So an investigation agency can tap for 6 months. However, the fundamental problem of this law is the provision that allows the investigation agency to tap without permission from the courts. It is called the 'emergency tapping system'. Investigation agencies can tap without court permission in case there is an urgent situation in which court permission cannot be obtained. But in this case the agency must apply for the permission within 48 hours and stop tapping if it fails to get the permission. Investigation agencies have taken advantage of the above regulation. They start tapping even before it applies for permission and stops if the court rejects it. In other words, they interpret this regulation to mean that they can tap for 48 hours freely without permission. A relatively large portion of tapping has been executed without court permission in the name of emergency tapping. In response to the growing criticism that investigation agencies had been taking advantage of emergency tapping, the government proposed a new revised Act. However, this did not satisfy the requests of the critics. In the revised Act, the government narrows the scope of crimes where tapping is allowed, shortens the application period to within 36 hours of the tapping, and establishes that the tapping should be monitored by the prosecutor, if executed by the police. The results of tapping that terminates within 36 hours must be reported to the court in written form. NGOs continually request that tapping should be restricted to specific crimes related to national security and drugs, or to abolish emergency tapping or considerably shorten the time allowed for wire-tapping. According to the February report of the Supreme Court and the Ministry of Information and Communication, there were 6638 cases of wire-tapping in 1998. This was a 10.6% increase from 6002 cases in 1997. 1038 cases of emergency tapping constituted 15.6% of the total. However, the court rejected only 1.5% of applications for wire-tapping. Of the 2289 applications made by investigation

agencies from January to August of 1998, the court rejected only 24. This is a 99% acceptance rate of applications. There were also 567 applications (January to August 1998) concerning the inspection of 45,560 materials in the mail, all of which the court permitted.

Discrimination against women

<Article 3 and Article 26>

93. In Korea, it is generally believed that people are equal before the law and have the right to demand the equal protection under the law. Based on this belief, Korean laws prohibit any type of discriminatory treatment based on race, sex, language, religion, political opinion, ethnic and social status, wealth, and other reasons. The Korean government, having obligations to further the notion of equality, however, seems to have failed in its pledge to provide more protection for women in order to improve their status in Korea.

94. As mentioned in the government report, the Korean government has implemented its policies on women's issues aiming to promote women's participation in society by making such outward gestures as enacting the Women's Development Act, expanding child care facilities, and enhancing vocational training for women. The government has largely been criticized for failure of effective implementation. For example, the Women's Development Act, enacted hastily without the consultation of women groups, is said to be unpractical because most of its provisions are vague. In addition, it is pointed out that the government cannot enforce the law and ensure other measures with only 0.28% of its national general account budget allocated to implementing policies concerning women.

95. Although the rate of female participation in economic activities has increased rapidly, government measures to meet the demand for more child-care facilities for securing women's employment are inadequate. As a result, the women's participation rates vary according to women's age group. The rate curve descends in their late 20s, but turns upward in their 40s. Official statistics in 1993 show that 1 million children were provided with nursery assistance out of the 1,774,000 of employed women's children between the ages of 1 and 5. In 1994, only 207,233 children, as many as 20% of all entitled children, were reported in child-care facilities. The government should pay the child care cost under the Act On the Provision of Nurseries fully for the people

whose income is below the minimum income line, beneficiaries of social welfare and medical insurance, and 50% for those who have monthly family earnings less than 700,000 Won. However, the government allocated funds for only 10,000 children out of 30,000 children from the families of social welfare beneficiaries. In particular, there is little governmental support given to newly born babies and children of low-income families in farming and fishing villages.

96. The average period of continuous employment for Korean women is 3.8 years, half that of Korean men, because Korean women tend to quit working while they raise their children. In 1995, the average wage for women was 52,5% of that of men, showing huge wage disparities according to the Korean Office of Statistics. The number of women working as high rank officers, professional or administrative personnel is excessively disproportionate. The fact that women comprised only 8.6% of all new employees with university qualification of the 50 biggest Korean companies, and 1.2% of public corporations in 1994, shows most women workers are allotted low pay, low skill jobs. When Korean women find jobs after raising their children, most job offers seem to be restricted to simple tasks in manufacturing, wholesale and retail industries, and the individual service sector in which their previous careers and/or working experiences are unlikely to be recognized. As many as 62.7% of women, working in very small companies with four employees or less where the Labor Standard Law does not apply, cannot enjoy their parental leaves. Women workers accounting for 64.9% of the total part-timers in 1993 represents their poor working conditions and employment insecurity.

97. With the Korean economic crisis, the number of unemployed women increased rapidly because of the disproportionate lay-off of women. Women workers in administrative positions decreased by 16.6% from 1997 to July, 1998, although the number of positions for men increased by 6.3% during the same period, showing that the men have replaced the jobs of women since 1997. Most of the laid-off women face severe difficulties in receiving unemployment benefits because they had previously been employed in very small companies to which the Labor Standard Law does not apply or because they had not been permanent employees. Discriminatory labor practice includes the following; forced retirement by relocation of the workplace, forced voluntary retirement, and selective dismissals of women workers after forcing all workers to submit written resignations. These practices prevail on the grounds that men are breadwinners. Consequently, it is accepted as a reasonable measure to make the

married women and female workers the first to be dismissed. Despite the hardships on women, the Korea government implements policies mainly to assist unemployed male workers. Thus, Korean women desperately need balanced national unemployment measures.

98. In 1994, several women's groups filed criminal complaints against 44 conglomerates that judged female applicants' attractive appearance as one of the employment criteria. But prosecutors punished only 8 companies through a small fine. Because of this apparent discrimination against women, many applicants would have plastic surgery in order to get employed. Under the current economic crisis, there is an increasing tendency towards this type of discriminatory employment practice against women. For example, a women's NGO denounced the railway authority in 1998 for requiring all women applicants to walk in front of the examiners in short-sleeved tops and skirts.

99. According to statistics in 1994, 1.9% of state-employed officials (level 5 or higher) as well as 7.2% of all committee members in the government were women. Although the government had decided to reduce the favorable employment provisions (based on an automatic addition of points to civil servant examinations) for men who have finished their mandatory military service, the government enacted the Assistance for Discharged Soldiers Act in 1998. This act benefited men out of the military with a 5% addition to the score of each subject of the entrance examinations into civil servant positions and state-operated corporations. Since this act gives very restricted job opportunities to women and the handicapped (who cannot serve in the military) a petition to the Constitutional Court against this act was filed.

100. On August 27, 1996, the Supreme Court declared that "setting compulsory retirement age for female telephone operators at 53 years old, 5 years earlier than other positions, does not violate the articles against gender discrimination of the Labor Standard Law or Equal Employment Law." This decision blatantly ignored that there are many forms of gender discrimination, implying that discrimination against women in the work place can only be measured against the existence of male counterparts as reference points. In a case that Kim Young-hee, the same plaintiff of the 1996 case, filed in 1982, the Supreme Court decided that it was discriminatory employment practice to force telephone operators in Korean Telecom to retire at the age of 43, 12 years earlier than employees at other positions. Considering that the occupation does not require highly specialized skills or physical strength, it cannot be justified that a 5 year

reduction in the compulsory retirement age is reasonable, while a 12 year difference is not.

101. After the abolishment of the employment system for female bank employees mentioned in our first report, major Korean banks adopted the System of New Personnel Classification in which they divide workers into 3 categories; general positions, clerical positions, and computer-operation positions. In practice, this new system is administered against women with banks placing only female workers into clerical positions. On Feb. 11, 1997, Daegu Subway Corp. rejected applications made by two women insisting that female employees cost more and that the Labor Standard Law restricted overtime work for women. It is also reported that a high school principal demanded a female teacher to apply for sick leave if she wanted more than a one month maternity leave. Women are discriminated in terms of job allocation, promotion, and labor treatment. Even though Korea does not have any institutional discrimination, it is difficult for women to survive in the workplace because Korea's military culture has remained. In Korea, there is a strong tendency to allocate assistant, supporting positions for women, regardless of what they want and regardless of their educational background.

102. The Supreme Court legally recognized sexual harassment for the first time in Korea in a 1998 case filed by a female research assistant at the Seoul National University against her professor. This judgment has contributed much to enhancing social awareness of sexual harassment.

103. Due to rigid customs and prejudices based on female virginity, victims of sexual violence do not want to face difficulties arising in the procedures at the investigation authorities and courts, resulting only 2% of crimes concerning women are reported. According to a research in 1996, 60.9% of women feared walking at night; 74.5% women have been victim to indecent exposure; 48.6% experienced sexual harassment; 46.3% received obscene telephones calls; 14.1% experienced attempted rapes; 7.6% were raped; 6.5% were raped as children. Another survey conducted on 2,986 junior high school and senior high school students shows how serious the issue of sexual harassment is in schools. It revealed that 20.4% of students received verbal sexual harassment from teachers; 24.2% had experience with teachers touching their buttocks and hips; 13.9% had experience with teachers pushing themselves onto them; and 7.6% had experience with teachers touching their breasts and armpits. This is mainly due to the prevalent patriarchal norms and practices in society and violent, male-dominated

sexuality.

104. The Laws on the Punishment of Sexual Violence and on the Protection of Victims of 1994 was revised because it did not include punishment of attempted criminals in its article 5 (special burglary and rape) or its article 7 (rape by relatives). It also failed to include the stepfather in the category of relatives. Sexually related crimes can only be investigated if it the victim has filed a complaint (with the exception of children under 14 years of age). As women fear reporting incidents to authorities especially if they know the perpetrator, numerous cases have been left uninvestigated. Also the law does not protect homosexuals and transsexuals by defining only women as victims of rape. The Korean Supreme Court ruled on June 12, 1996 that sexual abuse of a transsexual is not rape because one's legal sexual identity is determined by sex chromosomes.

105. On August 30, 1996 female students who attended a celebration festival for national reunification organized by Hanchonryon, a dissident student organization, were sexually and verbally abused by several military policemen arresting them. The policemen rubbed the students' breasts and used sexually abusive words to embarrass them. The ruling party rejected the call for an investigation into this incident in the Domestic Affairs Committee of the National Assembly. Consequently, the offenders were released in spite of 7 victims and women's NGOs denouncing and accusing the policemen.

106. Due to its patriarchal Confucian influence, the Korean social norm is that family matters must be handled by male heads of the household, others should not intervene in family matters, and that the authority of the head should not be challenged. Due to the definite distinction made between private and public matters, law-enforcing authorities tend not to intervene in cases of domestic violence, perhaps furthering the notion that a certain amount of violence is acceptable in ruling a family. According to the research of the Korean Research Center on Criminal Policies in 1992, 67.6% of men admitted that they beat their wives. According to statistics collected by the Ministry of Health and Welfare in 1993, 61% of the women had been abused by their husbands (including verbal assaults), and 30.2% of the women had been physically abused out of the 7,500 women who responded. Although domestic violence is a serious crime, very few cases are punished because of the assumption that domestic violence is a private matter in which intervention by investigating authorities is unnecessary. However, there are some severe cases of domestic violence publicly known such as Lee Sang-hee's case in 1996

(she killed her son-in-law who beat her and her daughter regularly), and Lim Soon-ran's case (she killed her husband who sexually abused her on a regular basis). Since the reporting of these cases, there were active campaigns calling for legal measures to help prevent domestic violence. On December 17, 1997 the Special Law on the Punishment of Family Violence and Law on the Prevention of Family Violence and Protection of Victims Act were established and have been implemented since July 1, 1998. The law however, has not been effective so far due to a lack of budget and the lack of a proper program in disseminating information on its provisions to courts and investigation agencies.

107. In 1994, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan filed a claim with the local court of Tokyo demanding punishment of those responsible for the abuse of Comfort women by the Japanese military, based on international law. This case was rejected for the reason that the statute of limitation under Japanese domestic laws had been exhausted; that the accused were not clearly identified; and that the war crime was not clear or detailed. Yet, the Japanese government decided to provide nominal consolation payment to victims from the Asian Peace and Friendship Fund, raised through private contributions rather than state funds. In January 1997, the Japanese government announced that it had agreed to privately deliver the payments to 7 victims. The Korean government also decided to provide financial support to victims but failed to make any official request to the Japanese government for compensation. On April 27, 1998, the Shimonoseki branch of the Yamaguchi local court ruled that the Japanese government should pay 900,000 Yen to the 10 Korean women who had served as forced laborers and/or military comfort women during World War II.

108. In 1995, female candidates accounted for only 1.6% out of all candidates in local self-government elections, but the rate of female representatives in the local bodies was 2.2%, two times higher than its previous rate of 0.9%. In the 15th election of the National Assembly in 1996, women constituted 1.5% of the total number of its candidates, but only nine congresswomen were elected including two, directly elected women. Thus, congresswomen account for 3% of the total congress. This is mainly due to the fact that women are largely disadvantaged in the very competitive single-member electorate system, and politics is largely regarded as a male arena. Further, female candidates receive very low levels of support from their political parties. But political parties have not accepted the recommendation from women's groups that a quota system

for women should be implemented in selecting candidates. The government is passive in addressing this issue, and political parties have virtually no policies regarding schemes for promoting female participation in politics, educational training programs, supporting activities in elections, the reform of the electorate system.

109. Since 1995, the sex ratio in Korean society has been out of balance. According to official statistics in 1993, the male to female ratio for the first-born child was 106:100, the second-born was 113:100, and the third born was 195:100, indicating the strong preference for male over female. An increasing number of Koreans choose to have a baby based on the determination of the baby's sex before birth. Approximately 29,000 abortions are performed per year as well as 58,750 medical check-ups for sex determination before birth. Korean family laws based on the strong male line-oriented patriarchy seem mostly to blame for these phenomena. The general notion that a family cannot continue without a son is rooted in the system of the family law. Amended family laws limit the rights of the head of the household, but heads of families still maintain their strong authority. The system requires that married women are legally moved to their husbands' families. It also sets the following order of succession in the right to head the family; sons, daughters, wives, mothers, and daughter-in-laws. Women may be the head of the family only if the men in a family give up their rights. A family in which there is no husband or father is not accepted as a household. The system also functions to transfer married women into the family structures of their husbands.

Juvenile Delinquency

<Article 10 and Article 14>

110. Article 4, paragraph 1, number 3 of the Juvenile Law stipulates "if the following conditions apply and if there is concern for the predisposition to future violations of the law due to their personalities or their environment, minors who are 12 years of age or more may be tried at the juvenile court." The following are grounds for being tried in a juvenile court; "they are not obedient to guardians' reasonable supervision; they run away from their homes without justifiable reason; they keep company with criminals and immoral people; or they have personalities with the potential to harm others as well as themselves." These conditions are so vague that it violates the principle of "nullum crimen sine lege" (the principle of legality). This also is a serious problem in that juveniles may receive a sentence given as criminal punishment for the sole reason that they have the potential to violate the law. The arrested juveniles may be sent to juvenile

court to be placed under probation, social services, and to receive lectures or put in juvenile court, although they are found innocent of any crime. Article 32 of the Juvenile Law stipulates that preventive order from juvenile courts should not affect the status of juveniles in the future, but in fact investigating authorities keep criminal records on juvenile offenders. Under the Juvenile Law, investigation can take place without detention and juveniles may be housed separately. However, there are many cases where juveniles are kept in detention without a chance for defense, because they are not aware of their rights. Since a public attorney may be appointed only after the indictment, juveniles without any parents or with only one parent, or those from poor families who do not have enough economic resources to choose their private attorneys, are not able to get legal services. In addition, there are many cases in which juveniles are put with adult criminals because of insufficient facilities in the detention centers.

111. Article 52, paragraph 1 of the Juvenile Law stipulates that the director of a juvenile detention center must deliver the juveniles to court within 24 hours if it is in the cities or provinces where the juvenile court is located, or within 48 hours if the center is located in other cities or provinces. And paragraph 2 of the same law regulates that the above must be carried out within the time frame specified in the arrest warrant. However it is common for prosecutors to send the offenders after the expiration of the warrant.

112. According to materials submitted by the Ministry of Education during the parliamentary inspection of the administration in 1995, there has been an upward trend in school violence; 5,300 cases in 1994, 5,200 cases in 1992 and 4,300 cases in 1991. As violence in schools continue to increase, prosecutors devised the "measures for prosecutors in charge of schools" in 1995. According to this measure, prosecutors monitor students whose names are informed by schools as students most likely to be violent. This violates the students' human rights because their scrutiny is based solely on the possibility of a crime. Should the juveniles be reprimanded or be forced to leave school, there is no place for guidance that they can turn to.

Right of Child and Family

<Article 23, Article 24>

113. Korea has ratified the Charter for Children and Youth Rights and presented the government's report in 1995. In January 1996, the United Nations' Children's Rights Committee pointed out that the Korean government failed to take measures to inform or

educate Korean children and youth about the Charter's principles and rules, and that the government failed to incorporate the basic principles of the Charter in legislation, policy-making and law-enforcement. The committee also recommended that the government carry out educational programs on the Charter to children and youth groups, and include such education in the school curriculum. However, the government has not taken any action in implementing these recommendations.

114. According to the Charter for Children and Youth Rights, children have the right to receive education with the objective of developing the child's sense of integrity, respect for his/her mental and physical capabilities as well as respect for the environment. In addition, children are entitled to enjoy proper recess and recreation, and to participate in recreational activities fit for their age group. However, Korean children only receive education geared toward the severe competition for entering universities. According to the Hankyoreh newspaper, 79.6% of students receive additional tutoring and attend study-assisting centers. 41.7% of students surveyed responded that they wanted to be able to play when asked what they wanted to do. As many as 53.4% of the students mentioned academic grades as their highest concern. The education system, driven by the race for the severely competitive university entrance exams, often leads to juvenile delinquency and even to suicide. According to research results conducted by the Ministry of Culture and Sports and Korea Youth Research Institute, 46.6% of the children up to grade 6 of primary school had had experience with alcohol, and 1.5% and 2.2% respectively had experience inhaling bond (type of glue) and various gases. This is likely to be affected by mass media and commercial advertisements that encourage drinking and smoking in Korean society. They are burdened with a heavy overload of studying. A healthy and safe environment is not guaranteed.

115. Children and youth are exposed to crimes at very serious levels. According to statistics in 1991, children at the age of less than 14 accounted for 10.2% of the deaths by traffic accidents. In 1993 alone, 1,539 cases of murder, rape, and violence targeted children. In 1995 the Korea Sexual Abuse Relief Center found that 30% of victims of sexual abuse were children, and that 30% of them were committed by incest. In May 1996, a principal attempted to rape a female student in his junior high school, and in July 1996, a kindergarten teacher attempted to sexually assault a child. A group of girls who do not have guardians or whose guardians are very old, reportedly continue to be sexually abused by men in the village.

116. Violence against children prevails because it is acceptable in Korean custom to give physical punishment for disciplinary purposes. According to a research conducted by the Korea Youth Research Institute, 76.7% of the total number of 1,045 students in primary school confirmed that they had been punished physically at home. As many as 98 students were punished severely at least once a month. The most critical issue is that Korea does not have proper facilities for protecting children from their parents' abuse. In addition, physical punishment is often employed as a disciplinary measure in school. On February 11, 1995 an athletics coach chained and locked up a 14-year-old judo student in a dormitory for attempting to run away.

117. According to statistics in 1993, about 700,000 or 800,000 students in primary schools and 450,000 in kindergartens were children of working mothers. The government announced its working plan for protection facilities for children after school, effective from 1996. It would provide 2,000 new centers for protecting children after school in which 72,000 children would be protected. However, the scheme has not yet been implemented. In addition, the number of undernourished children and children who are actual heads of their families have been growing every year. The government gives 1,500 Won per lunch for students who cannot afford their lunch, and provides 80,000 Won a month as additions to the living costs of children who head their families, but these amounts are insufficient in providing for basic needs.

118. Adoptions are very rare, and most of them are secretly done as Korean society puts great significance on blood relations. In particular, only 0.12% of handicapped children are adopted in Korea. Meanwhile, to promote the adoption of handicapped children, the government provides 100,000 Won a month as general aid and 200,000 Won a year for their medical expenses. However, these amounts are too low.

119. In addition, adopted children are not informed of the right of the adoption centers to cancel the adoption should there be abuse from the stepparents. They are also unaware of their right to obtain information about their background when they reach adulthood.

200. The patrilineal family system, mentioned in our earlier report, is abolished and a bi-lineal family system has been adopted instead. Therefore, children can be Korean nationals if one parent is Korean. The abolishment of the discriminatory Nationality Act in which the citizenship of the father took precedence in determining children's

nationalities, contributes to the advancement of equality between genders in Korea.

PART IV

Freedom of conscience and thought

<Article 18>

201. The government report claims that even if the Korean constitution does not explicitly state the freedom of thought, it is considered that the freedom of conscience in the Article 19 includes the freedom of thought. It also states that Korea tolerates individuals' thought of any kind, including inter alia, communism and "Juche" ideology of North Korea. But in reality for those who support communism and socialism or those who are against capitalism, freedom of thought is not guaranteed.

Conversion system or law-abiding oath system

202. One of the most disputable issues concerning the freedom of thought is the conversion system, or the law-abiding system. The government report states that the conversion of thought is left to the individual's own free will. However, there is still a rule that offenders of such laws as the NSL should be investigated concerning the conversion of their beliefs and can also be asked to submit a statement ensuring his or her conversion of conviction. (Article 14 Paragraph 2 of the "Rules for parole judgement" before the amendment) On the other hand, the government has revised the Article 14 Paragraph 2 of the "Rules for Parole Judgement" on Oct. 10. 1998. It states that any convicted prisoner held in violation of the NSL or the Act Concerning Assembly or Demonstration must write down an oath that she or he will abide by the order of law.

203. The government insists that this new "law-abiding oath system" is totally different from the previous conversion system. But it is basically the same system in that it requires people to take a law-abiding oath against their will. After the government decided to change the "Rules for Parole Judgement", it released 94 prisoners of conscience and reduced the sentence of 9 prisoners who submitted the law-abiding statement on Aug. 10, 1998. But the government excluded 360 prisoners of conscience, 17 of whom did not hand in the law-abiding statement for special amnesty. When the government released prisoners for the first anniversary of President Kim's inauguration on Feb.25 1999, it released only 18 prisoners of conscience who submitted the law-abiding statement and excluded 260 prisoners who failed to do so. However, the

government released 17 long-term prisoners who served more than 30 years in prison as well as 2 other prisoners without receiving law abiding statement. The government did so because it was conscious of international criticism. This signifies that the government itself silently admitted the problems of the law-abiding oath system. It is clear that conversion system or law-abiding oath system is a gross violation of the freedom of thoughts and conscience.

Security Observation Law

204. NSL, Criminal Law, or Military Criminal Law offenders have severe restrictions on their freedom of thought and conscience, even though they finished carrying out their sentences. Of the people who have been imprisoned for the violation of Article 4, Article 5, or Article 9 of the NSL and certain other national security related laws, those who "require observation to prevent the repeated offense of crimes because there are sufficient grounds to believe there is such a danger" can be placed under security observation for two years. (Article 4 of the Security Observation Law) The decision to impose security observation is made by the Minister of Justice based on resolution of the Security Observation Review Committee, and upon the request of a public prosecutor. The period of observation can also be extended. Those under observation are required to report to the local police station about their whereabouts, family assets, activities for the past three month and so on. They must also report a trip longer than 10 days. They are prevented from communicating with certain designated people, forbidden from attending certain assemblies and demonstrations, and are often ordered to attend certain gatherings.

205. A person who has been punished under the NSL can be exempted from security observation, if he, in the eyes of the Minister of Justice, has a law-abiding attitude, has permanent residence and employment, and has two personal guarantors of character.(Article 11) He must also submit an oath promising obedience to the law. (Article 14, Paragraph 1 of the Enforcement Decree of the Security Observation Law)

206. The Security Observation Law subjects a person who has already fulfilled his sentence to administrative measures imposing requirements to make statements contrary to his/her belief, infringing on the freedom to determine and move residence, as well as the right to privacy, including the right to associate or communicate. The law is in obvious violation of Articles 12, 17, and 18 of the Covenant. Nevertheless, the

Constitutional Court decided that the "Security Observation Measure" is a special prevention measure applied to those who are likely to commit another offense in outwardly expressing one's internal views. So the issue does not concern what the person thinks inside. It is not contrary to the constitutional regulations that ensure the freedom of conscience." (Decision 92-HEONBA-28 of Nov. 27,1997)

Freedom of Expression

<Article 19>

207. According to the government report, freedom of speech is restricted to a minimum. As a matter of fact, there has more or less been an improvement in the area of freedom of expression such as periodical journals, broadcasting etc., since the Committee's revision of the first report. However, freedom of expression continues to be restricted under the National Security Law (NSL). The role of the NSL in the restriction of the freedom of expression will be discussed in the following section on the NSL.

The Censorship of film and video

208. The Constitutional Court decided that the censorship of films is unconstitutional and created the Film Promotion Act, passed on March 17, 1997. This law, however, still allows censorship.
While the old law enabled the government to censor films and to cut problematic scene or punish producers, the new law empowers a committee to classify films and to impose administrative fines instead of penal responsibility to producers who run films without the committee's review. However, the new law can postpone the review of certain films for up to 6 months. This means the film cannot be presented to the public for 6 months even after completion of production, which is not much different from the provision of the old law. This brings serious problems to film producers since they cannot generate capital during that period and must reschedule the date of presentation. After the new law was passed, film producers edited their own film in order to avoid restriction by the government. This system, thus, is criticized as de facto censorship, which is sometimes considered worse than practices of the past.

209. President Kim Dae Jung promised to revise the censorship law during his presidential election campaign, showing much interest in the freedom of expression. Therefore the Film Promotion Act was scheduled to be revised after Kim's inauguration.

However, the only progress brought by the law, passed and entered into force in 1999, was the reduction of the 6 month restriction to 3 months. The current film promotion act of 1999 gives restriction to film producers when:

(1) films have the potential to disturb the fundamental democratic order and would damage national dignity
(2) they excessively express violence and obscenity which is considered an offense against public decency
(3) they have the possibility of affecting national interest by disregarding diplomatic relationships with other countries and Korean cultural identity.

210. Those restrictions are not clear and can be arbitrarily used. The above "fundamental democratic order" usually aims at restricting socially progressive films, or films leaning ideologically to the left. In the history of Korean film, only a few progressive or ideologically leftist films have been allowed public presentation. The restriction of obscenity forbids the presentation of the film solely because of sexual explicitness without consideration for artistic value. The Korean government especially restricts those films portraying gay culture.

211. Videotapes are regulated by the law on phonograph record and video. The Act was revised in the similar way to the Film Promotion Act. The restrictions applied are equivalent to those applied in the Film Promotion Act, such as the 3 month suspension for consideration of classification.

National Security Law

<Article 6, 9, 12, 15, 18, 19 and 26>

212. The government report refers to the National Security Law in relation to the article 19 of the Covenant. However, it does not justify the human rights infringement situation created by the NSL. The report says that during the seventh revision on 31 May 1991, a declaratory clause was inserted to provide that "construction and application of the NSL shall remain at the minimal level, and shall not extend the interpretation or wrongfully restrict fundamental human rights of citizens guaranteed under the Constitution." (Article1. Paragraph2) Also, provisions likely to induce the violation of human rights were fully reviewed. But only abstract clauses such as "knowing it endangers the national existence, security of liberal democratic basic order" were occasionally added. The clause is so vague that it cannot actually affect the application of the national

security law. It is no more than a useless embellishment. The following statistics are clearly showing, even after the revision of the NSL, there have been too many detentions and punishments.

213. The number of arrested NSL violators

Year	1993	1994	1995	1996	1997	1998
Number	104	393	285	494	674	409

* source from MINKAHYUP Human Rights Group

Number of people indicted under National Security Law & Anti Communist Law

YEAR	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97
NSL	23	169	171	153	93	176	318	432	104	312	414	357	342	136	403	226	413	633
ACL	136	65	13	-	3	2	5											

*Source: Ministry of Court Administration <Supreme Court's Yearly Report> 1980 - 1997
*Anti-Communist Law was abolished on 30 Dec. 1980. The number of indictment is the cases to which previous Anti Communist Law was applied.

Result of trials relating to the NSL cases (First Trial Court nationwide)

Ctgry	1992	1993	1994	1995	1996	1997
Receipt	446	265	403	226	413	633
Imprisonment	138	92	93	59	98	176
Probation	162	120	217	146	176	324
Innocence	1			2	3	7

* Source: Ministry of Court Administration <Supreme Court's Yearly Report>, 1992-1997

214. The government report mentioned that a revision of the NSL had been conducted before the initial report was examined in July 1992. When the initial report was examined, the members of the Human Rights Committee pointed out problems of the revised NSL. The Committee, as a result, recommended that a serious attempt should be made to phase out the NSL, which the Committee perceives as a major obstacle to the full realization of the rights enshrined in the Covenant. In his report to the Commission on Human Rights on Nov. 21, 1995, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the U.N, Mr. Abid Hussain, pointed out "the most important evidence that shows freedom is not well

ensured in Korea is the existence of the NSL" and requested that the government repeal the NSL and consider other means. In spite of all the above recommendations, the government has not taken any action on the NSL.

Examples of the cases applied by the NSL

Formation and Association with Anti-State Organization(Article 3 of the NSL)

215. The NSL defines an anti-state organization (Article 2) as an association or a group having a command structure with the purpose of claiming the title of a government or to overthrow the State. It details the punishment of those associated with an anti-state organization, according to his or her status in the organization. (Article 3)

216. The statement, "claiming the title of the government or to overthrow the State" is vague. Especially when it comes to "overthrow", the criminal law states that it is an offense against the security of the state and entails a riot big enough to endanger the peace and security of a province. However, the NSL defines the association and assembly of a group as a violation, and have often classified a group of at most 20 pr 30 members as anti-state organizations. There are approximately 20 organizations classified as anti-state organizations including North Korea, chochongryon(pro-North Korea group based in Japan), South Korean Labor Party, South Korean Socialist Union, Cho-Sun Labor Party Central Division.

217. South Korea declared "Peaceful unification" in the article 4 of the constitution, Furthermore, in October, 1991, South and North Korea were admitted to the United Nations. On Feb. 18, 1992, the very first official agreement between the South and the North Korean governments was achieved. The "Agreement on Reconciliation, Nonaggression and Exchange and Cooperation between South and North Korea"(South-North Agreement) was signed by the prime ministers and became e
ffective through the presidential ratification of the South and North Korean governments. And on March 20, 1992, both governments jointly registered the South-North Agreement with the secretariat of the United Nations under article 102 of the Charter of the United Nations. According to this agreement, South and North Korea pledged to exert joint efforts to achieve peaceful unification and to respect each other's political and social system (Article 1); to refrain from slander and vilification (Article 3); and to refrain from armed aggression along the Military Demarcation Line specified in the Military Armistice Agreement of July 27, 1953, signed after the Korean War.

Therefore, the designation of North Korea as an anti-state organization needs to be reconsidered.

218. Regulations on anti-state organizations, along with the ones about enemy-benefiting organizations in article 7, clause 3 of the NSL infringe on the freedom of thought (Article 8), the freedom of expression (Article 9), and the freedom of assembly (Article 22).

Espionage and Performance of Objectives (Article 4 of the NSL)

219. Some actions "under the instruction from an anti-state organization" are subject to punishment under this article. Approximately 50 types of actions are liable for capital punishment. (Paragraph 1, Items 1 through 4)

220. Also the crime of espionage or "detecting, collecting, divulging, transmitting and/or broadcasting state secrets shall be punished. These actions are concerned with the following types of state secrets that shall be punished with death penalty or life imprisonment: "a military secret or state secret, which in order to avoid grave damage to national security are allowed to be known by only a limited number of people and are concerned with facts, and materials, or knowledge to be kept a secret from an anti-state organization." Divulgence of all other state and military secrets can lead to the death penalty, life imprisonment or imprisonment for no less than seven years.

221. So far the court and investigation agencies have claimed that military secrets or state secrets refer not only to state secrets in the strictest sense of term, but also to secret state matters concerning all fields of politics, economy, society, culture, etc. Furthermore, even though the information is considered self-evident or common-sense knowledge in the Republic of Korea, it shall be regarded as a state secret in the NSL when it might provide benefit to an anti-state organization and damage to us" (Decision, 95-Do-1148 of July 25, 1995)

222. The ANSP on 27 April 1993, arrested writer Hwang Suk-young who visited North Korea. He was charged with disclosing the names of people working in domestic dissident movements and information on the general situation of the movements during his visit. He was also charged with disclosing information of the existence of a thousand nuclear warheads in South Korea. The Seoul Criminal District Court acquitted the former charge and convicted him for the latter. On the other hand, The Seoul High

Court declared innocence in both cases. It confirmed the original decision concerning the information of dissident movements, and also stated that the latter information was not valuable as a state secret as it had already been revealed through foreign and domestic media. (Seoul High Court Decision 93-No-3764 of Feb. 21, 1994). But the Supreme Court ruled that he was guilty in both cases, reversing the previous decision by the Seoul High Court. It was declared that public knowledge, even if legally disseminated through newspapers or other publications, would still be considered a state secret if it might be useful information for North Korea or an anti-State organization. (Decision 94-Do-930 of May 24, 1994)

223. However, the Constitutional Court declared on Jan 16, 1997 that the meaning of "state secret" in the article 4, paragraph 1 of the NSL is interpreted strictly as the facts, objects or knowledge which are not disclosed to the public and is valuable enough to bring obvious danger to state's security when released. (Decision 92-HEONBA-6, 26 and 93-HEONBA-34, 35, 36 of Jan. 16, 1997). According to the above decision, the Supreme Court changed its previous precedent and held that state security should not be any fact, object or knowledge that has already been known to the public and should contain real value as a state secret that can bring serious danger if revealed. (Decision 97-Do-985 of July 16, 1997)

224. But even after the change of the precedent, the Supreme Court still considers "names and social background of the not-converted long term prisoners, the place of imprisonment, prisoner's location, etc." as state secrets. (Decision 97-Do-656 of Aug. 9, 1997)

225. State secrets also include "the formation, organization, specific advocacy and the tasks of the "National Alliance of Democracy and Unification", specific tendencies of the dissident movement organizations in South Korea, the names of members of Central Committee of Nation Independence and Peaceful Unification and '95 project of the "Pan Nation Alliance". This shows that the court has not fully broken away from the previous interpretation of the NSL, even after the ruling of the Constitutional Court.

Escape, Infiltration(Article 6 of the NSL)

226. Article 6 of the NSL states that anyone infiltrating into the Republic of Korea from an area controlled by an anti-state organization, or escaping to such an area, with the knowledge that it will endanger national security or the basic liberal democratic order,

shall be punished with imprisonment for up to 10 years (Paragraph 1). This includes cases where the escape or infiltration is committed to receive orders, or is based on orders from an anti-state organization. (Paragraph 2)

227. Those who support these regulations say these regulations are for punishing spies who plan for an extended stay or to make an underground party without collecting secrets or terrorizing. But recently these regulations are used to punish those who visited North Korea. These people's visits are openly processed. In order to punish these people, court unreasonably defined the term "escape" as the action of going into North Korea from the other areas. It also restated the "Infiltration" includes the action of coming into South Korea. It is explained that these actions include both secret and open cases.

228. Mrs. Young-kil Park, a wife of deceased pastor Ik-whan Moon who had been punished for his visit to North Korea, was also punished for visiting North Korea to attend the first memorial ceremony of deceased Kim, Il-sung on June 28, 1995, even though she returned openly from the North through "Panmoonjum." Her action was declared as an infiltration, escape crime, according to the NSL.

229. The Seoul District Public Prosecutors Office brought a Catholic priest, Moon Kyu-hyun, (Seohakdong Catholic Church in Jeonju) into custody on Aug. 27, 1998 on the charge of the violation of the NSL (Infiltration & Escape). With 9 other priests, he had visited the North to attend the tenth anniversary of Pyungyang Changchoong cathedral from Aug 11 to 17 with the permission from the government. When North Korean officials stated that they would allow visitation if the group participated in the 8.15 Festival of unification as the South Korean delegate, Moon accepted this suggestion saying "As a priest I can't ignore the believers of the North." The group finished its scheduled trip a day earlier and arrived in Seoul on the 17th, submitting "the report about the result of visiting North Korea" to the Department of Unification. Moon also handed in the content of the speech he made at the unification festival. But the inspector alleged that Moon violated the NSL because he intentionally violated the conditions set by the Department in visiting the North (not to attend any political events like 8.15 festival, not to discuss the private political idea and not to make any public declarations). The inspector insisted that Moon made a statement upon his arrival in which he praised the 8.15 unification festival. He claimed that Moon visited the Kumsoo mountain memorial and bowed before deceased Kim Ill-sung, and wrote comments of praise in

the guest book, which were clear violations of the NSL. The Catholic priests' assembly for the realization of Justice protested the arrest, saying that his arrest and indictment were based on an unreasonably broad application of infiltration, escape crimes in the NSL. In fact, at the head of the speech he made at the festival, Moon mentioned the necessity for unification and criticized the leaders of both North and South governments who did not put the public's desire for unification as a national priority.

230. The court held that even foreigners who go beyond areas under the control of the Republic of Korea or residents of a third country who enter into areas under the control of anti-state organizations are also in violation of the NSL as escapists. (The Supreme Court Decision 97-Do-2021 of Nov. 20, 1997) This is an interpretation is far from its original context.

231. Furthermore, the death penalty can be imposed in cases where the escape or infiltration is committed for purpose of receiving directives, or under directives from an anti-state organization. It is a brutal and cruel punishment applied to anyone who simply visited North Korea without intentions for espionage.

232. Also a directive is a vague notion. The court mentioned that a directive is a notion includes control and order but does not necessarily need order and obedience controlling system and there is no limitation in its form and this includes the case of receiving directives from those who previously received a directive.

Praising, Encouraging, Etc. (Article 7 of the NSL)

233. People who have "benefited an anti-state organization by way of praising, encouraging, propagating, or siding with the activities of an anti-State organization, its members or the people who have received directives from such organization, or through any other means" or who have "praised, encouraged, propagated or sided with the activities of an anti-state organization, its members or people who have received directives of an anti-State organization or have propagated or instigated the disruption of the State with the knowledge that it will endanger the national security or survival or the basic liberal democratic order" shall be punished with up to seven years of imprisonment (paragraph 1)

234. The government report explains that the NSL does not infringe on the freedom of expression. It states that the purpose of Article 7 of the NSL is not intended for

punishment of those who study or simply express communism or "Juche" ideology. Only cases in which such expressions of thought exceed the inherent limits and rouse anti-State activities--i.e. agitation of violent revolution or assertion of overthrowing the free and democratic system--are considered a violation of the NSL. Therefore the above Article does not constitute an infringement upon the freedom of expression.

235. The Constitutional Court also declared on Oct. 4, 1996 that article 7, paragraph 1, 3 and 5 of the NSL are constitutional. It declared that there is still the possibility for the law to be disputed and to be applied too extensively, but by adding the subject component in the Article 7, paragraph "with knowledge that it will endanger the national security or survival or the basic liberal democratic order" the danger of interpreting the law extensively has disappeared. Accordingly the paragraph 1, 3 and 5 based on this article are not considered to have danger of infringing or limiting the basic freedom of expression and it is not against the principle of "nulla poena sine lege" (Decision 95 HEONKA 2 of Oct. 4, 1996)

236. But the notion of "praising", "encouragement", "siding with" mentioned in the Article is very vague. The pattern of judgments that incur punishment based on this notion is not easy to understand. Especially the clause "in one way or another" is extremely vague. Also the definitions of "anti-State organization" and "benefiting anti-State organization" are not clear.

The abuse of the article about enemy-benefiting organizations (Article 3 of the NSL)

237. People who have formed an organization for the purpose of conducting the activities listed in Paragraph 1, or who have joined such organizations shall be punished with no less than one year of imprisonment (Paragraph 3)

238. As mentioned above, because of the vagueness and arbitrary interpretation of the law concerning enemy-benefiting organization, the following groups have been punished: organizations formed to protest against the government, students movement group, and labor movement unions as well as those who support, feel friendly toward North Korea, organizations that take a stand of socialists without supporting North Korea Thus, since the 1965 judgement of the People's Revolution Party as an enemy-benefiting organization, 54 groups were added to the list by Sept. 1996. In the last 2~3 years, those who had joined the organization in the past but have quit, those who now attend graduate school and even those who are in the army have been brought to

custody and punished on suspicion of forming and joining an enemy-benefiting organization in the past. Due to political pressures demanding the revision of old practices as well as the reduction of number in civil servants, investigators working at public security agencies are competing to prove that they have been active,

239. The government designated the 6th National Student Union as an enemy-benefiting organization because it advocated the retreat of the U.S. military stationed in South Korea and supported Federal Unification. The government arrested many members of the National Student Union. Since Feb. 1998 inauguration of President Kim, 182 students were arrested. They were all prosecuted for violation of article 7 of the NSL. 44% of the 413 NSL violators have been kept in prison for one year since Kim's government.

The abuse of the article on enemy-benefiting expressions (Article 5 of the NSL)

240. People who have produced, imported, duplicated, possessed, transported, disseminated, sold or acquired documents, drawings or any other means of expression for the purpose the above listed actions (enemy-benefiting expressions) are liable to the punishment stipulated by the corresponding paragraph (Paragraph 5)

241. Investigative agencies have arrested the producers, distributors, those who keep any materials that contained the content of agreement with North Korea, socialism or communism. These were considered enemy-benefiting materials.

242. The court has taken the same stand only with the exception of a few cases. The Supreme Court held that the "purpose" which is prescribed as a requirement for the crime in Article 7. Paragraph 5 of the NSL should be exist in the event that: (i) the accused is aware that contents of material in question objectively benefits the enemy by way of siding with the activities of North Korea, such as propaganda, agitation, and so forth: and (ii) the accused does, or willfully neglects to, recognize that his act may benefit the enemy. It further held that if the accused acquired, possessed, manufactured or distributed the expressed material objectively benefiting the enemy as described in (i) above with knowledge of its enemy-benefiting character, he should be presumed to have willfully neglected to recognize that his act may benefit the enemy. The Supreme Court also held that, unless the accused proves that he did not intend to benefit the enemy, he should be considered to have had such purpose. (Decision 95-Do-1035 of Dec 23, 1996)

243. There are 1,072 types of books and 1,584 types of printed material, charged and found guilty of enemy-benefiting expression from Jan. 1, 1974 to Dec. 31, 1995.

244. From Jan 1st, 1994 until Dec 31st, 1995, 1,072 books and 1,584 printed matter have been declared in violation of the NSL. Most of the books of Marx, Angel's, Lenin's are included among those volumes, and any book related to 'Juche' Thought published in North Korea fall under the same case. Various types of anti- governmental materials produced by student movement groups or labor unions are considered enemy-benefiting materials.

245. Even university textbooks written by professor are included in this category. In 1994, two professors out of nine, including professor Sang-whan Jang at Kyungsang University who wrote "The understanding of Korean Society" were indicted without detention. In 1997, a university textbook "Cognition of the Truth and Logical Statement" was considered enemy-benefiting material and resulted in the arrest of the writer, Professor Ji-dong Park.

246. The Ministry of Justice declared the books "The Roots of Gay Oppression" and "Gay Liberation and the Struggle for Socialism" in violation of the NSL. On January 26, 1999, Hong Kyo-sun of Chekgalpi Publications received a sentence of one year and six months with a stay of execution of three years. The prosecution also indicted Hong and 4 members of the International Socialists, claiming that the publishing company produced "Worker's Solidarity", the main bulletin for the IS.

247. On Dec. 7th, 1993, Kim Hung-ryol, the head of the Modern Philosophy Club was arrested and sentenced to a one year imprisonment sentence with a two year probation for posting writing that defended the Socialist Workers' Federation in the magazine "Our thought" through the computer network. Kim Tae-sung, who posted his writing expressing his deepest lamentation for the death of Kim Il-sung in Sep. 30th, 1995 was arrested. Four people including Suk-jin Yun who wrote their opinions about the possibility of the government's fabrication on Kangneng armed agent infiltration were taken into custody on a charge of praising, encouraging the enemy as stated in the NSL.

248. Yong-jun Ha, presently a senior at Hanyang University, summarized some parts from legally produced books, "Race and Class" by Alex Callinicos and "Insane Capitalism" by Chris Harmon. He posted them on the board of International Club of a

Computer Network and was arrested on the charge of producing and distributing enemy-benefiting material in April 13th, 1998 and sentenced to 8 months in prison both in the first and the second trial. But the author of "Race and Class" is a professor of Politics at York University in England and has been invited by the Korea University Graduate Students' Union and to deliver a speech in an auditorium of the university. Soo-haeng Kim, Professor of Economics at Seoul National University insisted that most of the books by Allex Callinicos and Chris Harmon were translated into Korean and now legally sold in South Korea, and that it cannot be a crime to read their theses and pass the content on to others.

249. The improper application of the NSL is happening in the arts as well. The police arrested Joon-sik Suh, Representative of Sarangbang for Human Rights Movements, a member of the executive committee of the second Human Right Movie Festival, on the charge of violating Article7 of NSL. He was also prosecuted on Nov, 28th. Among the reasons he was indicted was that he showed a movie, "Red Hunt" during the festival. The movie is about events in Cheju Island in the 1940s in which people were victimized as a result of political conflict between the left and the right. But "Red Hunt" was once sent to the Second Pusan International Film Festival and showed to many people including the presidential candidates Kim Dae-joong and Lee Hoi-chang. It was previously inspected for the show in the festival. The criticism is that it is absurd to apply the regulations about keeping, distributing enemy-benefiting material when the movie had already been publicly inspected and played and shown to many people.

250. The police took three people including Tae-Il Kim, the representative of "Hopeful Bird" , a singing theatrical group, on the night of Feb. 21st, 1994 and in the morning of the 22nd. The police said that they arrested these people for praising North Korea in the script of "Shine the morning", which they were planing to play on their provincial tour in 1994. After that the police additionally arrested 6 more people for attending "Thursday Meeting for abolition of NSL" on Mar. 24th. The Pusan District Court declared 3 members of the group guilty on June 15th, stating that both art and freedom could be restricted for the security and public order. The group was accused of introducing North Korean revolution songs through its nationwide university tour, and thus praising North Korea.

251. When investigators cannot find any evidence while investigating a suspect for organizing or joining an enemy-benefiting organization, they simply apply the enemy-

benefiting material related regulation. But the court that is responsible for stopping this absurd investigation practice and protecting the freedom of expression does not sufficiently carry out its role.

252. The National Security Planning Agency arrested Park Choong-ryeol, Vice general secretary of National Alliance of Democracy and Unification on Nov. 15th, 1995, on the charge for gathering, communicating, producing and distributing enemy-benefiting materials. In this case the reason given in the warrant for arrest was absurd. The warrant states that "On a certain day in 1989, in a certain coffee shop... persuaded by a certain North Korean agent, ... was instructed and received a certain directive ..... reported certain things." When he was investigated in the National Security Planning Agency for 22 days after apprehension, he was forced to admit that he joined the Labor Party, worked as a spy and received 40million won as an operational fund. He was tortured harshly in the process. He was allowed to sleep only for an hour a day. He was forced to continually remain standing and was beaten brutally. He could not bear the torture and made a one-line false statement "I joined the Labor Party." Afterwards, Park was sent to the prosecutor's office and was investigated for 30 days (except for Sundays), from early in the morning until 11 o'clock at night. In spite of the long investigation, the prosecutors could not find any evidence for Park's alleged espionage activities. So the prosecutors excluded the charge of gathering, communicating with the enemy and accused him for violating article 7 of the NSL. They said that Park not only studied "Juche" thought and praised the anti-State organization, but also produced and distributed enemy-benefiting material for regular meetings of the National Alliance of Democracy and Unification. What prosecutors classify as enemy-benefiting content from the resource material is as follows: "Our society is a new colony under the control of imperialism and has severe problem of self-contradicting capitalism. President Kim's government is one which is anti-democratic, anti-nation, anti-people, and an America-friendly subordinated power" and "pursuit of unification by way of the federal system, conclusion of the peace treaty, abolishment of the NSL and NSPA, breakup of conglomerates, retreat of the US Army, armaments reduction, and the breakup of the Korea-U.S. administrative agreement and the Korea-U.S. defense treaty should be carried out." and "In order to achieve the goals above, we should unite and protest by way of forming the united front of the people."

253. The Seoul District Court that examined this case declared Park to be innocent on the suspicion of studying "Juche" thought. Also concerning the distribution of materials,

the court declared him innocent for there was no enemy-benefiting content. But a prosecutor appealed the decision and this case is pending in the second trial.

Meeting or Communication(Article 8 of the NSL)

254. Those who, with the knowledge that such action threatens the nation's existence and security and the order of liberal democracy, has met with, or has established liaison with, by communication with, or any means, a member of an anti-state organization or a person who has received directives from such organization shall be punished. (Paragraph 1) This paragraph is also problematic in that the concepts of 'an anti-state organization', 'directive' are very vague. Also it is in conflict with the newly presented South-North Exchange Cooperation Law in which many types of human and material exchanges are promoted.

255. The National Security Planning Agency arrested the Monk, Jin-Kwan on the charge of assembly, communication with the enemy as stated in the National Security Law. He passed information on the political opposition in Korea as well as the Buddhist sector, and related materials to the representative of the Nationwide Democratic Union, Kim Byung-yeon, through telephone, fax and mail while he was trying to send three unconverted former prisoners to North Korea. He was declared guilty even though he insisted that he did not intend to benefit the enemy but did so to send the long-term prisoners for humanitarian reasons.

Failure to Inform(Article 10 of the NSL)

256. Those who do not report to the investigation agency a person known to have committed a crime stated in Article 3, 4, and Article5, Paragraph 1,3,4 of the NSL shall be sentenced to imprisonment not exceeding 5 years or subject to a fine not exceeding two million won. But this regulation infringes on the freedom of conscience, especially the freedom of silence guaranteed in the article 18 of the Covenant. It punishes people for failing to report their close friends, family members, relatives who a committed crime described in the NSL. Futhermore, even though a person comes into contact with an offender whose offence he/she is ignorant of, he or she can still be punished on the charge of not reporting the criminal. There is a possibility that he or she gets investigated or punished only according to the violator's statement.

257. The Seoul District Police Agency urgently arrested an executive member of the National Assembly of New Politics, Huh In-hwoi, on the charge of committing the

crime for not reporting the fact that he met a spy, Kim Dong-sik. After his arrest, Huh insisted that he actually did not even have a chance to meet Kim. But he was charged for committing the crime of not reporting in the article 10 of the NSL. As for this case, Seoul District Court declared Huh to be innocent, saying that Kim's statements alone was not reliable. (Seoul District Court Decision 95-KODAN-10657 of Feb 8, 1996). But at the second trial the court declared him to be guilty.

Extension of the Pre-Trial Period(Article 19 of the NSL)

258. In South Korea, the police and prosecutors can take a suspect into custody for 10 days at the request of a prosecutor and a warrant issued by the court. Also the prosecutor can extend the period for another 10 days. Thus, a suspect can be legally kept in custody for 30 days. In addition to this period, Article 19 of the NSL allows the police and the prosecutor to each extend the detention of a suspect for 10 more days, making the whole pre-trial period of detention up to 50 days.

259. The Constitutional Court declared that additionally extending the duration of detention for the crimes detailed in Article 7 and 10 of the NSL violates the constitution, and that detention must cease in 30 days. (Decision 90-HEON MA-82 of April 14, 1992) But other regulations not included above like Article 3, Article5, Article 8 and Article 9 are also in violation of the principle of equality prescribed in Article 26 of the Covenant and the principle of 'presumption of innocence' prescribed in Article 14, Paragraph 2 and 3(g) of the Covenant.

260. But the Constitutional Court declared that it is not unconstitutional and does not violate the principle of equality, personal liberty, the principle of innocence presumption and the right to get a quick trial because it is essential for the existence and security of the nation and its people, and the degree of the restrictions are not excessive. (The Constitutional Court Decision 96-HEON KA-8. 9. 10 of June 26, 1997)

261. However, when the Human Rights Committee investigated the initial report in 1992, many committee members pointed out that the custody period is too long for a suspect. It clearly shows that the Constitutional Court is not fully carrying out its role as the protector of human rights in Korea.

Freedom of Peaceful Assembly

<Article 21>

262. According to the Act concerning Assembly and Demonstration, people should inform the police before holding an assembly. The chief of the police station can give a prohibition notice within 48 hours with proper reasons.
The justifications for banning the assembly are:

1. when the reason of the assembly is not properly described on the report
2. when the political party dissolved by the decision of the Constitutional Court holds the assembly
3. when the assembly is considered to pose a danger to public safety by physical violence
4. when the assembly is held before sunrise or after sunset
5. when the assembly is held within 100 meters of the National Congress, District Courts, Constitutional Court, Institutions owned by diplomacy, and residences of president, speaker of the legislature and Chief-Justice.
6. when the assembly causes traffic problems in main cities or main roads

Number 3 and 6 above are frequently used to prohibit assemblies. For example, from 1995 to July 1996, 83 assemblies were prohibited, of which 54 cases, approximately 64%, were prohibited due to the reasons stated in number 3 and 6. Furthermore, these statistics are based on formally reported cases. Therefore, there have been more assemblies prohibited by police.

263. On 19th of June, 1998, the police prohibited as assembly scheduled by the Center for Human Rights with other human rights NGOs on the grounds of number 6 above. The NGOs were supposed to hold an assembly in front of the National Police Headquarters, through which they planned to protest illegal checks on citizens on the streets. However, the police informed them that the assembly will be prohibited on the ground that it was to be held on the main street and might cause traffic.

264. On 5th of September, 1996 the Seoul District Police Headquarters prohibited an assembly, scheduled to be held by the National Farmers' Federation (NFF), for traffic-related reasons. According to the report presented by the NFF, order keepers were stationed to deal with any disturbances caused by their assembly. This was clearly illegal since the current law says that "In case the host of the assembly arranges any method to maintain order on street, the assembly shall not be prohibited."

265. According to the ADA, prohibition notice by the chief of police can be appealed to the mayor who supervises the police, and can further be adjudicated by the court if the initial appeal to the mayor fails. However, the current system does not help to relieve illegal prohibition.

266. The statistics of arrests for the violation of ADA from Jan. 1, 1993 to Aug. 31, 1996, shows that out of the total 26,621 assemblies, 39,997 protesters were arrested. This means that 1.5 protesters are arrested per assembly. Among those, 39.1% (15,625) were indicted or charged with summary prosecution. Especially, among 1,263 political prisoners who were arrested in 1996, the number of ADA charged arrestees was 756, 59.8% of the total. Among the political prisoners arrested in 1997 for political reasons, ADA charged arrestees were 797, 58% of the total.

267. The Korean government uses armed police to suppress assemblies, which is considered illegal by the government. Aggressive suppression usually results in many protesters being wounded. Furthermore, even though the assembly is allowed to be held, it may be cracked down by the police in case it is considered illegal by the police during the rally.

268. On Feb. 1, 1996 at the Pusan Train Station Plaza, laborers jointly held an assembly to nullify laws to restrict the workers' fundamental freedom. During the walking demonstration, the police attacked the laborers and citizens with a clubs and shield, resulting in 35 wounded people.

269. On March 22, 1997, a group of students held an assembly to protest the government's suppression that caused the death of a student, Yoo Jaeul. Around 500 students tried to hold a rally on the street. The police sprayed tear gas in the students' face. In addition, to make matters worse, the police hit students with an iron club, iron chains and clubs with ends tied to iron. As a result, around 20 students were hurt and hospitalized. The police admitted using those tools and announced that would do away with them.
On March 28, 1997, students scheduled to hold an assembly to protest the government's policy concerning Seoul National University. 700 Students tried to hold a rally out of the school, but riot police threw stones at the students. During the encounter between students and police, 19 year-old Nam yoon-kuk of Seoul National University was injured. On March 28, 1997, students held an assembly in Chosun University and the police directly hit a 21 year old student, Park Min-seo of Chunnam University. As a result, he was seriously ill from cerebral hemorrhage.

270. Nothing seems to have changed even under the Kim Dae-jung government. After the Mayday rally of 1998, the government's stance toward protesters was getting increasingly oppressive. In May 6, 1998 the government announced that they would use resolute power to suppress assemblies considered illegal, by arresting the people concerned.

271. In 1998 union workers held the 108th Mayday anniversary in Jong-myo Park with 35000 workers and students. After the rally, they marched through the streets peacefully, but the police indiscriminately suppressed them by using tear gas. This led to a clash between the protesters and the police, which resulted in the hospitalization of 8 people as well as numerous injuries. A number of people were arrested simply because they had participated in the assembly.

272. On Aug. 16, 1998 Kang-dong Police arrested two members of a performance group, Hee-mang Sae. According to the announcement of the police, they participated in an assembly for unification, which was considered illegal by the police, and they were charged for violation of ADA. One of the members said that they were asked to present their performance in the assembly. After the performance at midnight the police searched them and brought them to Kwan-Ak Police Station, and then transferred them to Kang-dong Police station. During the police investigation, they were beaten by three or four investigators. 12 members were arrested and two were detained. However, the court declared them "not guilty" of the charges.

273. The police prohibited an assembly because the protesters did not report the materials used in the assembly, thus ruling that the assembly was illegal.

274. On Jun 13, 1996, an NGO held an approved assembly to protest against the government's oppression and to demand the release of political prisoners. However, the police prohibited the assembly for the reason that the protesters used a mask with the President's face, which was not reported to the police prior to the assembly. The police used teargas to disperse the protesters and arrested 31 people.

275. On Aug. 8 1996, human rights NGOs including Minbyun held a rally to set free political prisoners. 200 riot police stopped them. The rally had been approved by the police, but the police stopped the rally as soon as the rally move on to the streets. The police said that the blue shirts and ropes representing prisoners' garments were not

reported as material used in the rally.

276. The amendment to the ADA passed on April 28, 1999, states that from May 1999 onwards, assemblies and demonstrations with the potential to infringe upon the citizen's right to privacy will be prohibited from gathering in residential areas. Also, the government has formally legalized the "police line" (set up for the purpose of 'maintaining order'). Moving beyond the confines of the designated space is now punishable by law. The ADA had initially been designed to protect protesters, but in practice is used to prohibit people from protesting against the government. This means that those assemblies and protests against the government are not allowed and that the participants are punished. Furthermore, the oppressive measures the police use result in many being wounded, but the police or government is never held responsible for them. Freedom of expression is the fundamental human right of a democracy and it should not be restricted when it does not pose a clear and present danger to other people. To attain these rights it is necessary to reform laws as well as government policy.

PART V

Recommended Questions to the Government of the Republic of Korea

Relationship between the Covenant and Domestic Laws

1. In the government's first report on Feb. 10, 1996, the Committee Against Torture stated "when conflicts between domestic laws and the Covenant arise, the *lex posteriori* rule and the principle of *the precedence of special law* shall be applied." Meanwhile, the government's delegate in the 1992 review of the Committee confirmed the superiority of the Covenant over domestic law.[1] Furthermore, the government report states: "In the event that a law enacted prior to the Covenant's ratification is in conflict with provisions of the Covenant, the Covenant shall be superior to domestic laws."(please refer to para. 15)

(A) What is the official position of the government concerning the legal relationship between the Covenant and domestic law?

(B) In case domestic laws passed after the government's ratification of the Covenant, which one(Covenant or domestic laws) takes precedence?

2. For the past several years, the Committee found in several individual communication cases acting under the Optional Protocol to the Covenant, that the applicants' human rights were violated under the Covenant and they were entitled to effective remedies including appropriate compensation. Furthermore, the Committee asked the government to ensure that similar violations do not occur in the future.(please refer to para. 16-19)

(A) What measures did the government take after those views were expressed?

(B) If the government did not take any action, are there any plans currently being discussed for future implementation?

[1] The delegate stated as follows: he[the delegate] could not accept the claim that the guarantees contained in the Covenant might be overturned by subsequent domestic legislation, since such a suspicion underestimated the Republic of Korea's commitment to human rights and the increasing public awareness of the rights enshrined in the Covenant.... Moreover, since the principal rights enshrined in the Covenant were also embodied in the Constitution, any conflicting domestic legislation would be deemed unconstitutional. UN Doc. CCPR/C/68 Add.1, para.5.

Right to Fair Trial

3. (A) Is a defendant or his legal counsel entitled to read or copy investigative records possessed by investigation agencies before they submitted the records to court as evidence?

(B) If this right is not guaranteed, is sufficient defense really possible? How can the fair trial principle of the Covenant be fully satisfied?

Right to a Defense Counsel

4. (A) In National Security Law violation cases conducted by a state agency named the National Intelligence Service, where are the suspects detained?(please refer to parp.45)

(B) According to the Human Rights NGO's report, suspects are detained in the building of the agency, which is not the place designated by the judge on the detention warrant.(please refer to para. 63) Is this true? If true, what is the legal justification?

5. The NGO's report states that there are still cases that are denied the right to counsel.(please refer to para. 45-46)

(A) Can the right to counsel of suspects and detainees be restricted at the discretion of the investigation agencies under present laws?

(B) What are the reasons for the agencies in denying or interfering with the right to counsel, especially in cases involving National Security Law charges?

(C) Is such denial legally valid?

(D) If not, have those responsible for denying the right been prosecuted?

6. Investigation agencies often use torture during interrogation. Thus, the presence of a defense counsel can be an effective way to prevent torture.

(A) Is the defense counsel allowed to be present during interrogation of suspects by investigation agencies?(please refer to para. 47)

(B) If not, why?

Right to Life

7. According to the NGO's report, the death penalty is prescribed in 15 provisions for the Criminal Code, 45 provisions for the Military Criminal Code and more than 50 acts

for the National Security Law. Article 93 of the Criminal Code and 13 provisions of the Military Criminal Code prescribe the death penalty without any alternatives.

(A) Is this true?

(B) If true, can all of those crimes be recognized as "the most serious crimes" as stated in Article 6(2) of the Covenant?

(C) Does the government have any plans to limit the number of crimes eligible for the death penalty?

Prohibition of Torture

8. Human rights NGOs argue that torture and inhumane treatment are still used by law enforcement officials and that they are almost never prosecuted, even if evidence of torture is produced.(please refer to para.61)

(A) How many suits of allegations of torture by investigation agencies have been filed since the government ratified the Covenant?

(B) In how many cases were the allegations of torture acknowledged and in how many cases were they not?

(C) Have there been any cases in which investigators convicted of torture, continue to hold positions in investigation agencies?

(D) Why have such investigators been allowed to continue holding such positions?

(E) In how many cases did the prosecution give impunity to those responsible for torture during the above period?

(F) What are the reasons for impunity?

Right to Liberty

9. Before indictment, the maximum period of detention is known 30 days for normal cases and 50 days for National Security Law violations.

(A) Can this period be considered reasonable?

(B) Any plans to reduce this period?

10. The 1995 revision of the Criminal Procedure Code provides for a new warrant review system, under which a judge is to examine a suspect before issuing a detention warrant.(please refer to para.68)

(A) Is this an automatic obligation of the government or is this based on the applicant's request?

(B) In the latter case, how many arrestees have made use of this system?

(C) Can this system be considered to satisfy Article 9(3) of the Covenant, which states "anyone arrested shall be promptly brought to a judicial officer...."

(D) How many arrestees have made use of this system since 1997?

Humane Treatment of Inmates

11. Korean penitentiary institutions are known to hold too many inmates.(please refer to para.71)

(A) How many penitentiary facilities are there throughout the country?

(B) How many inmates across the country are held in normal times?

(C) On average, how many square meters of a cell is allotted to each inmate?

12. (A) How many doctors are there for all of the correctional facilities combined in Korea?

(B) According to the human rights NGO's report, Ae-Soon Koh was arrested on the charge of violating the National Security Law on 4 December 1995, at which time she was eight months pregnant. She requested medical examination due to her deteriorating health condition. Why was her request denied?

13. (A) How many complaints and /or suits have been filed by prisoners and/or families of prisoners for mistreatment by prison officials since the ratification of the Covenant?

(B) How many petitions have been accepted by the authority such as the Ministry of Justice?

(C) Among the cases in which allegations of torture were acknowledged, how many cases resulted in non-indictment or suspension of sentence, and how many cases resulted in conviction with sentences?

Right to Privacy

14. The NGO's report claims excessive wire-tapping practice by investigation agencies. According to the report, the agencies widely exercise wire-tapping for 48 hours without permission of judicial officers, due to an emergency situation. They initiate wire-tapping even before they apply for warrants to courts. It is not until the application for warrants is rejected by the court that they stop tapping.(please refer to para.92)

(A) Is this true?
(B) If so, in how many cases and which crimes have investigation agencies conducted wire-tapping since 1994 when Act on Protection of Communication Secret?

Discrimination against Women

15. According to the NGO's report, Korean women are discriminated against in the work place, being laid-off in large numbers since 1997 due to the Korean economic crisis and IMF bail-out. Discriminatory labor practice against woman such as forced retirement, forced voluntary retirement and selective dismissal of woman are prevalent on the grounds that men are breadwinners.
(A) Is this allegation true?
(B) If true, what has the government done to prevent this discriminatory labor practice in the work place?

Freedom of Conscience, Thought and Expression

16. According to the NGO's report, the situation in relation to the National Security Law remains unchanged even after the installation of the civilian government.(please refer to para.212-213)
(A) How many people have been charged/ prosecuted/ punished for the violation of NSL since the government's initial report was reviewed by the Committee?
(B) If unchanged, what's the reason?
(C) What's the official position of the government for NSL? Revision or abolition?

17. Korean courts are known to broadly interpret 'state secrets' prescribed by the NSL. Even public knowledge, which has already been disseminated through newspaper or other media, would still be considered a state secret if it might be useful information for North Korea or other anti-state organizations.
(A) Is this allegation true?
(B) If so, does this practice comply with Article 19 of the Covenant? Does it not excessively restrict the Covenant's provision on the right of expression?

18. The NGO's report states that the government still compels NSL offenders to convert their thought through the newly revised conversion system, "law-abiding oath system". It is argued that this system is totally different from the previous conversion

system.(please refer to para.202-203)
(A) Is this law-abiding oath a precondition for the parole of NSL offenders?
(B) If so, what is the real difference between the previous conversion system and the present one?
(C) Any plans to abolish this system?

19. According to the NGO's report, those prisoners who violated the NSL or other criminal laws are severely limited in their freedom of thought and conscience even after their release. They can be placed under security observation for two years, which can be extended by the Minister of Justice. The Security Observation Law requires these people to report to the chief of the local police station their location, family assets, their activities and so on. They must also report any trip longer than 10 days in duration.(please refer to para. 204-206)
(A) How can this regulation be complied with the rights provided in the Covenant?
(B) Any plan either to abolish or revise this system?

20. Joon-Sik Seo was charged with Article 7 of the NSL because he presented a movie named 'Red Hunter' to the public. However, according to the NGO's report, the movie had already been presented to the public in an international film festival held in Korea, without any problems.(please refer to para.249)
(A) What is the reason why Mr. Suh was charged even though the movie had already been presented at the festival?
(B) It has been pointed out through individual communication cases acting under the Optional Protocol that Article 7 of NSL is in violation of Article 19 of the Covenant. What is the official position of the government for that provision? Abolition or revision?