The National Security Law

133. The violation of freedom of expression by the National Security Law (Paragraphs 245 - 247 of the government report) is already explained in the special section dealing with the law (See paragraphs 96 - 119). However, it must be reiterated that the NSL, in application of the concept of "national security" as a broad legitimizing banner, is actually used to categorize and punish any person who criticizes the South Korean political and economic system or who by action or word expresses even the slightest agreement with North Korea.

Prohibition of Third Party Intervention Laws

134. Another important laws which are the source of violation of freedom of expression are the so-called provisions on "prohibition of third party intervention" in labour relations. These provisions are found in Article 12-2 of the Labour Union Act (Law No.1329 of April 17, 1963, as last amended by Law No. 3350) and Article 13-2 of the Labour Disputes Adjustment Act (Law No.1327 of April 13, 1963, as last amended by Law No. 3351). They were enacted by the National Security Legislative Council and became effective on December 31, 1980.

135. These provisions stipulate that "person other than a worker who has actual employment relations with the employer, or concerned trade union, or other persons having legitimate authority under law shall not engage in an act of interference for the purpose of manipulating, instigating, obstructing or any other act to influence the concerned parties" in "the organization or dissolution of a trade union, joining or disjoining a trade union, or in collective bargaining with the employer" (Labour Union Act) or "in a labour dispute" (Labour Disputes Adjustment Act). Those who have violated these provisions shall be subject to a penalty of imprisonment not to exceed 3 years (Labour Union Act, Article 45-2) or 5 years (Labour Disputes Adjustment Act, Article 45-2) or applicable fines.

136. The aforementioned provisions are an important link to understand the very difficult conditions of workers. Indeed, South Korean workers did not have any guaranteed rights during the process of industrial development and it was, in reality, virtually impossible to form independent trade unions. However, with the fall of the Park Chung-Hee regime in 1979 after an 18 year rule, workers began organizing trade

unions and demanded that their rights be "guaranteed" in the various labour related laws. Many people sympathized with the struggles of workers and began to extended their support to the newly initiated labour movement. However, the new regime which took power through a coup d'etat in 1980 saw a need to suppress the burgeoning labour movement. The provisions in question were enacted in this context to prohibit non-labour people from supporting the labour movement, thus considerably weakening its impetus.

137. These provisions have served a double purpose: by punishing the people who supported the labour movement, it has also isolated the workers. Furthermore, these provisions have never been used to punish the "third parties" who took the side of the management. In these provisions, crime is very vaguely and abstractly defined as "an act of interference for the purpose of manipulating, instigating, obstructing or 'any other act' to influence the concerned parties." The abstractness and vagueness of the provisions make it impossible to have a reasonable extrapolation of the types of actions that are actually prohibited, and have thus been abused for the violation of human rights. They have been criticized as violating the principle of legality [*nullum crimen nulla poena sine lege*] and also as violating equal rights and opportunities by being unfairly disadvantageous to workers. However, on January 15, 1990, the Constitution Court pronounced that these provisions were constitutional (89-Hunga-103) making any further legal argument impossible.

138. A. There are many instances of punishment for 'third party intervention'. Persons providing assistance and support to workers in their efforts to organize a trade union or extending encouragement to workers involved in a labour dispute have been punished under these provisions. The most recent and representative case is the case of the Solidarity Forum of Large Company Trade Unions (Solidarity Forum). In autumn 1990, the leaders of a number of trade unions of large companies formed the Solidarity Forum. In February 1991, over 60 officers of the Solidarity Forum, who were leaving a meeting in the northern district of Seoul, were illegally apprehended by the police and later, 7 trade unionists, including Mr.Hong Young-Pyo, a secretary of the Forum, were formally indicted. Six of them were charged and indicted for violating the provision of the prohibition of third party intervention of the Labour Disputes Adjustment Act for having intervened in the labour dispute then being conducted by the Daewoo Shipyard Trade Union. Mr.Hong was charged and indicted for third party intervention of the Labour Union

Act (Mr. Park Chang-Su, chairperson of the Hanjin Heavy Industries Trade Union, who was also arrested in this case, was later found dead while in custody. The authorities have claimed that he had committed suicide, but families and fellow workers have raised serious doubts against the claims of the authorities).

B. Chronology of the labour dispute in the Daewoo Shipyard Company, and the so-called crime of the third party intervention in that labour dispute is as follows:

The trade union of the workers of the Daewoo Shipyard Co. in Guhjae Island in South Kyungsang Province launched a strike on February 8, 1991 following a dead lock in a long drawn out collective bargaining negotiation with the management. The government responded by announcing that it would send in police troops to crack down the strike. Following the announcement, the representatives of the Solidarity Forum met on February 9 at a retreat center in the northern outskirts of Seoul, some 400 kilometers away from the site of the strike by the Daewoo Shipyard workers. They finally adopted a statement proclaiming that the action of the Daewoo Shipyard Trade Union was just and that they opposed the unjustifiable decision of the government to send in police troops to violently crack down the strike, and transmitted this statement to the Daewoo Shipyard Trade Union through a facsimile. Meanwhile, on February 13, the labour dispute at the shipyard ended peacefully through an acceptable agreement between the trade union and the company management. However, the officers of the Solidarity Forum were charged and indicted for having intervened in the labour dispute at the shipyard, and the Seoul Criminal District Court found them guilty as charged and sentenced them to prison terms. (Chung Yun-Kwang, 91-Kodan-1464; Lee Eun-Ku, 91-Kodan-1477; Hong Young-Pyo 91-Kodan-1478; Sohn Jong-Kyu 91-Kodan-1478; Lee Chul-Kyu 91-Kodan-379. Recently the Supreme Court upheld the lower court's guilty sentence in the case of Shon Jong-Kyu. 92-Do-70)

C. Background to Mr. Hong Young-Pyo's alleged violation of the prohibition of third party intervention of the Labour Union Act is as follows:

Mr. Hong was dismissed in February of 1986 from Daewoo Motors Co. with a number of fellow workers as a result of a labour dispute during 1985. Ever since the dismissal he and his fellow workers have campaigned for their rehiring. At the same time, the Daewoo

Motors Co. Trade Union also demanded their reinstatement at numerous collective bargaining negotiations. As a result, a number of dismissed workers were reinstated in the company rolls. In September 1989 and in July-August 1990, the trade union and the management held official negotiations in the presence of the representatives of the dismissed workers on the issue of their reinstatement. During the period of collective bargaining negotiations in September 1989, Mr. Hong produced and distributed among the Daewoo Motors workers leaflets containing their demand for reinstatement. And during the July-August 1990 collective bargaining negotiations, he took part in the negotiations session on the basis of the agreement of the management, as a representative of the dismissed workers to discuss the issue of their reinstatement. However, the Public Prosecutor's Office charged and indicted him for violation of the prohibition of third party intervention provision of the Labour Union Act for the above mentioned actions and the Court found him guilty as charged.

139. All trade unions in South Korea exist as an integral part of company-based unions. It is not possible to form a trade union without registering the union as a member of the government recognized Federation of Korean Trade Unions (FKTU) or one of its affiliated industrial federations. The FKTU has long been criticized as being a yellow trade union which supports the policies and actions of the government. Furthermore, when a trade union is engaged in a collective bargaining negotiation or a labour dispute, it is unlawful for another trade union (except the FKTU and the industrial federation to which the union in question belongs) to extend support because it would violate the prohibition of third party intervention provisions. Thus it is in this way that the prohibition of third party intervention laws greatly restrict inter-union support and relationship. As a direct consequence these provisions violate the rights of workers to be able to receive support and help from each other and from other people, and at the same time it also violates the freedom of action and expression of the third party.

Censorship of Performances, Movies, Records and Tapes

140. As the government report describes (Paragraph 239), the Constitution guarantees freedom of education and art, and prohibits the existence of censorship of speech and the press. However, various laws existing in South Korea today are used for prior permission and censorship, in violation of the Article 19 of the Covenant stipulating freedom of art and expression.

Prior Censorship in the Performance Act

141. The Performance Act (Law No.902 of December 30, 1961, as last amended by Law No.4183 of December 30, 1989), in Articles 14, 14-2, 17, and 27, and the Articles 15 through 18 of its enforcement decree, stipulates that the organizers of performances shall file a notification to the responsible authority and receive a prior examination on the script or the scenario of the performance by the Minister of Culture. Furthermore, performance of dance or music may be subject to an actual performance audition. In case the organizer conducts a performance varying from the one submitted for examination, or puts on a performance which had failed to pass the examination, the performers may be suspended from performance for up to 6 months and the organizer may be fined up to 1 million Won.

Prior Censorship in the Movies Act

142. A. According to the Movies Act (Law No.2536 of February 16, 1973, as last amended by Law No.4183 of December 30, 1989) a movie producer shall be registered with the Ministry of Culture (Article 4) and a movie must be subjected to the examination by the Performance Ethics Committee following its completion. The movies which failed to receive the approval of the Performance Ethics Committee are banned from screening (Article 12,Paragraphs 1 and 2). Persons engaging in the production of movies without registration with the Ministry of Culture, or screening a movie which has not received the prior approval of the Performance Ethics Committee are liable to a penalty of up to two years of imprisonment or 5 million Won in fines (Article 32, items 1 and 5). Furthermore, the Performance Ethics Committee is mandated to refuse the approval of movies which are "in violation of the basic order of the Constitution, or deemed to damage the authority of the State, or deemed to be against good public order and customs or disrupt the social order, or deemed to inflict damage in the friendly international relations, or deemed to have danger of slackening the spirit of the people" (Article 13). The comprehensiveness of the criteria for censorship has been the basis for the failure of many of the movies that criticize government policies to receive favorable examination. Freedom of art and expression has been greatly restricted through this kind of censorship. This far-reaching criteria for censorship in the Movies Act is the same as those in the Act Concerning Records and Video Materials as explained below.

B. In June, 1988, Mr. Hong Ki-Seun, who produces short length movies, failed to

register his 16 mm movie entitled "Oh Land of Dreams" with the Minister of Culture. The movie was screened in the small theatre "Hanmadang" without the examination of the Performance Ethics Committee. Because of this, Mr. Hong and the owner of the theatre, Mr. Yu In-Taek, were indicted for the violation of the Movies Act (Seoul Criminal District Court, 89-Kodan-3541, 4362). On October 5, 1989, the Court handed down a guilty sentence against both of them. "Oh Land of Dreams" depicts the stories of the citizens of Kwangju who died protesting the newly installed regime following the coup d'etat of 1980. Because the government had never made a custom of demanding prior notification nor examination for short length movies until this particular instance, it is believed that this movie was treated in an extraordinary way because it contained materials that criticized the government.

C. In December, 1989, movie producer Mr. Lee Yong-Bae produced a movie entitled "The Night Before The Strike" which depicted a story of the effort and hardships endured by workers trying to organize an independent trade union and to launch a strike. The movie was shown at the theatre "Hanmadang" and to university students in a number of campuses. Because of this, Mr. Lee and the representative of the theatre Hanmadang, Mr. Kim Myung-Gohn were indicted for the violation of the Movies Act and are currently in trial at the Seoul Criminal District Court (90-Kodan-8020).

D. Mr. Lee Sang-In produced the movie "Mother, Your Son" without prior registration with the Minister of Culture, and screened the movie in a number of universities without the examination of the Performance Ethics Committee. For this, he was indicted for violating the Movies Act and was found guilty by the Seoul Criminal District Court (September 3, 1991, 91-Kodan-4595). The government mobilized combat police troops in order to blockade the universities and to confiscate movie projectors and films to prevent the screening of the movie.

Prior Censorship of Records, Tapes and Video Materials

143. A. Article 3 of the Act Concerning Records and Video Materials (Law No. 4351 of March 8, 1991, repealed the Act on Records, Law No. 1944) stipulates that the producers of record albums, tapes or video materials must register each of the productions with the Minster of Culture and must receive prior examination by the Performance Ethics Committee if the production is for the purpose of sales, distribution and/or rental.

Article 16 provides that the sales, distribution, exhibition and storage of records, tapes and/or videos which have not received prior examination is prohibited. Violation of the law may be punished with up to 3 years of imprisonment or a fine of up to 20 million Won (Article 24(1)).

B. In September 1990, Mr. Park In-Bae was indicted under this law for his production and sale of cassette tapes without registration with the Ministry of Culture nor prior examination by the Performance Ethics Committee. The tapes contained songs which supported the labour movement or were critical of the government. He was sentenced to 2 years of imprisonment by the Southern Branch of the Seoul District Court (91-Kodan-1418).

System of Registration of Periodical Publications

144. A. In Article 2 of the Act Relating to the Registration of Periodicals (Law No. 3979 of November 28, 1987, as last amended by Law No. 4441 of December 14, 1991), the meaning of "periodicals" is defined in the broadest possible terms as "newspaper, news service, magazine or other publication which is produced continuously for more than once a year under the same title." Article 7 also stipulates that each periodical, regardless of the number of copies produced or the purpose of production, shall be registered with the Minister of Information under very strict conditions. Persons responsible for the production of a periodical without registration are liable to imprisonment of up to 1 year or fines of up to 5 million Won (Article 22).

B. There are many cases of punishment against organizations which are critical of the government for the production of informational material without prior registration under this law. For example, Mr. Yoon Yeong-Kyu, the president of the National Teachers and Educational Workers' Union (Chonkyojo), which is banned by the government, was convicted for producing and distributing the newsletter (Chonkyojo Shinmun) for the membership (Seoul Criminal District Court 89-Kodan-5590; 90-No-548). Mr. Oh Choong-Il and Mr. Yoon Jeung-Seuk, the representatives of the dissident organization National Democratic Alliance of Korea (Chonminryon) were indicted for having produced the NDAK Newspaper (Seoul Criminal District Court 89-Kodan-5592). Mr. Kwon Young-Kil, the president of the Korean Federation of Press Unions, was indicted and is being tried for the production of its organ "Press Union Bulletin (Ullonnoboe)" without registration (89-Kodan-5591). In

the case of the KFPU, its applications for registration of the organ were rejected by the Minister of Information under the pretext that it was not a trade union with legal recognition because it had not joined the Federation of Korea Trade Unions, the government-recognized national trade union center. Then, the president of the KPFU was prosecuted for the publication of its organ without registration.

Freedom of Expression in Broadcasting

145. Freedom of expression in television broadcasting is becoming a problem. There are four Korean television stations in South Korea, with the U.S. armed forces having its own station (AFKN). The four are as follows: Korea Broadcasting System (KBS) which is the public broadcasting company, Munhwa Broadcasting Company (MBC) which is owned by the Foundation of the Broadcast Culture, Seoul Broadcasting Service (SBS) which is owned by Taeyung (one of "Jae-bul" companies) and began airing in 1991, and educational station(EBS) which is owned by the Ministry of Education. Among these, KBS is the most important broadcasting station since it owns 2 television channels and several radio stations.

146. According to the Korea Broadcasting System Act (Law No.3980 of November 28, 1987, as last amended by Law No.4264 of August 1, 1990), members of the Executive Board, which is the top decision-making body of KBS, are appointed by the President, after an initial recommendation by the Broadcast Committee. The President of KBS is also appointed by the President, with the recommendation by the Executive Board (Articles 6 and 15). Management staffs of MBC are elected by the Foundation for the Broadcast Culture. According to the Foundation for the Broadcast Culture Promotion Act (Law No.4032 of December 26, 1988), the Executive Board of the Foundation is composed of 10 directors, four of whom are to be recommended by the Speaker of the National Assembly and six of whom by the Broadcast Committee (Article 6).

147. According to the Broadcast Act(Law No.3978 of November 28, 1987, as last amended by Law No.4441 of December 14, 1991), the Broadcast Committee is highest authority concerning the basic policy on broadcasting (Articles 11 through 21). The Broadcast Committee are composed of nine members, each three of whom are appointed by the President, the Speaker of the National Assembly, and the Chief Justice respectively(Article 12). Since the management of the KBS and MBC television stations

are basically appointed by the Broadcast Committee and since the members of the Committee are chosen by the President, the Speaker and the Chief Justice whose are not deemed to be independent from the President, it is quite questionable to what degree the management of the television stations are independent from the government. In fact, in April 1990, the president of KBS who enjoyed public support was dismissed, and a person who was criticized as being obedient to the government was appointed as the new president of KBS. Some 5,000 employees of KBS opposed the government's decision and went on a strike for 20 days. Thirteen employees of KBS who participated in the strike were arrested and punished.

148. The Broadcast Committee examines the content of the programs before they are put on air. Depending on the results, the Broadcast Committee may order the broadcasting company to apologize to the viewers, to explain the content of the program, to change or to cancel the program, to sanction the person responsible for the inappropriate program, or to prohibit the person from appearing on stage for not more than 1 year(Article 21). However, the standards of the examination are vaguely defined as "items concerning fairness of reporting and commenting," "items concerning growth of liberal democracy and respect of human rights," and "items concerning promotion of public morals and social ethics" (Article 20 Paragraph 2): thus, the Committee may abuse its power to prohibit a very wide range of programs that it deems to be at odds with the government's point of view.

149. Some representative cases of the Broadcast Committee's controlling the content of programs are described below. These cases show the role that the Committee serves in restricting the freedom of expression in broadcasting.

A. Broadcasting Committee prohibited the airing of the documentary, "Korea - the Unknown War" which was requested by MBC in 1989 and 1991. This program on the Korean War was made by Britain's Thames TV Production. The Committee cited the reason of the prohibition that the documentary contained a different view on the Korean War than those already prevalent and that it had biased visual imagery.

B. In January 6, 1991, MBC began airing the drama called "T'ang (land or real estate)" which was scheduled to 50 segments. This drama dealt with the social tensions

arising from the extreme increase in land prices due to speculation of real estate and about the conflict between the rich and the poor and drew favorable responses from the viewers. However, on January 24, 1991, the Broadcast Committee ordered an apology announcement and disciplined the producers. In the end, this drama was pulled off the air after the 15th segment. After this incident, the Broadcast Committee received strong criticism that it was not independent from the government and that it served only the interests of the government and the rich.

C. From May 24, 1991 to June 21, 1991, KBS broadcast a weekly television program called "Daehwa(dialogue)" dealing the problems of the unification. The Broadcast Committee ordered KBS to make an apology announcement on the reason that this program might have a negative influence on the government's reunification policy and also treated the students' unification movement as something legitimate and well-intentioned. Because of this incident, the Committee was strongly criticised by the public for checking the programs critical of the government policy.

Other Problems Concerning Freedom of the Press.

150. The management of the press are criticized for not being independent from the government. Though there have been some improvements since 1987, journalists still complain that sensitive criticism concerning the government is restricted by self-censorship. The President, the Agency for National Security Planning, and the military are treated as so-called "institutional inhibitions". In articles critical of these, they are referred to indirectly as "someone in the higher ranks", "some organization", or "military authorities", and so on. Especially in articles critical of the President, the Agency for National Security Planning or presidential aids exercise their influence to cut the report entirely or at least to minimize the report. At times reporters who critically report about the government are illegally arrested and investigated.

151. Another problem that limits the freedom of the press and citizen's right to information is the close relationship between the government authorities and the press and reporters. In South Korea, reporters who work for well-known organs of the press are assigned specific beats, eg. government institutions, judicial courts, and political parties; these reporters make up the press club. The press club functions to monopolize

the information and prohibit reporting by newly established press and freelancers. Moreover, the press club also disciplines or sometimes even ostracizes those reporters who violate internal control of the press club. It is widely known that the press club often receive money from the people they are supposed to report on. This practice of receiving money ("Chonji") is quite common, known to be done by the President, many government offices, political parties, and social organizations. This practice has become a major cause in the infringement of the citizens' right to know, since it influences the press to distort information. Although the Korean Federation of Press Unions, Reporters' Association, and other journalists' organizations have been conducting a cleanup campaign on this deeply-rooted corrupt practice, prospects are not bright. Although many problems have been raised in several instances, usually no investigation has been carried out by the authorities.

152. Indictment and punishment of reporters who persistently investigate government's crimes and government's violation of human rights is one way that freedom of the press is restricted. On August 15, 1989, one of the students' movement leaders and the President of Chung-ang University students council, Lee Nae-Chang's corpse was discovered in southern coast island. Although the investigating authorities concluded that he had committed suicide, Lee's friends and family pointed out the contradictions in the investigative report and raised questions. When it became known that before his death Lee was accompanied by a woman working at the Agency for National Security Planning, the question whether ANSP was involved in his death was raised. However, Mr.Lee Kong-Soon, a reporter for the "Han-Kyoreh" Newspaper, who was following and reporting on the incident, was indicted and being tried for libeling the woman based on false report (Seoul Criminal District Court 91-Kodan-4995). In this case, the witnesses first made a statement that they saw the employee of the ANSP accompanying Mr.Lee, but later reversed their statement, and the indictment on reporter Lee Kong-Soon was carried out based on the reversed statements of the witnesses.

Secret Protection Laws

153. Besides the National Security Law, the Military Secret Protection Law and Article 127 of the Criminal Code are the laws that protect the secret information of the country. According to Article 127 of the Criminal Code, a present or former public official who divulges official secrets obtained in the course of his duties and which

has been provided by statutes shall be punished with imprisonment for not more than 2 years or suspension of qualifications for not more than 5 years. According to the Military Secret Protection Law (Law No.2387 of December 26, 1972, as last amended by Law No.3492 of December 31, 1981), the "military secrets" to be protected under this law are defined as all information on the military policy, strategy, diplomacy, plan of operation, tactics, formation, equipment, mobilization, intelligence, transportation, communication, personnel management, production, supply, and research of military materials of the National Armed Forces, the Homeland Reserve Forces, the United Nations Forces and foreign armed forces (the U.S. Forces) which are stationed in South Korea. All of the following actions are subject to punishment according to this law: "detecting or collecting military secrets with improper methods" (Article 6), "divulging military secrets detected, collected or obtained in the course of duties to third parties" (Articles 7 and 8), "divulging military secrets by mistake" (Article 9), "divulging military secrets obtained accidentally" (Article 10), "losing military secrets or not reporting the fact of loss or theft of military secrets" (Article 12).

154. The Military Secret Protection Law was promulgated by the Emergency State Council in 1972. This law has been criticised as restricting the rights to seek information and the freedom of expression on the military matters in that it extends the scope of the military secret to all the matters concerning the military and thereby allows no one to access to such informations other than made public by the military authorities.

155. The article 127 of the Criminal Code clearly prescribes to punish the act of divulging the "official secrets which has been provided by statutes". However, the Supreme Court has broadened the scope of the "official secrets" in this provision as to including "not only the secrets so provided by statutes but also matters made to be secret due to the needs of the society and matters that have substantial interest in not being known publicly" (Supreme Court, 1981. 7.28. 81-Do-1172). According to this decision, an inspector of the Board of Audit and Inspection, Mr.Lee Moon-Ok was arrested and indicted for divulging the public the information on the real estate speculation by various "Jae-bul" companies (Seoul Criminal District Court, 90-Kodan-3615).

156. Together with the broadest construction of the term "state secret" or "military secret" under the National Security Law, the above mentioned secret protection laws

infringe on the freedom of expression by prohibiting the press from gathering and reporting government informations and on the rights of the people to seek, receive and impart information which are recognized in the Article 19 of the Covenant. Especially, it must be emphasized that any person or public official is not exempt from the net of these secret protection laws in that any information which are naturally acquired in everyday lives or the press is deemed to be protected "secret."

Government Monopolized Textbook System.

157. According to Article 157 Paragraph 1 of the Education Act(Law No. 86 of December 31, 1949, as last amended by Law No.4347 of March 8, 1991), the "books for course of study" in the elementary, middle, and high schools shall be limited to those which the Ministry of Education has the copyrights, which have been authorized or approved by the Minister of Education. According to the "Regulation Concerning the Books for Course of Study"(Presidential Decree No.8660 of August 22, 1977, as last amended by President Decree No. 12908 of August 22, 1988, the "books for course of study" mean the students' textbooks and teachers' teaching manuals (Article 2). Among these, the books whose copyrights are owned by the Ministry of Education are called the "First Class Textbook," or the "First Class Teaching Manual," and those books that have been authorized the Minister of Education are called the "Second Class Textbook," or the "Second Class Teaching Manual." In case of all the curricula in the elementary school, the Korean language, ethics and the Korean history in the middle and high schools, only the "First Class Textbooks and Teaching Manuals" must be used for education. The rest of the middle and high schools' textbooks and teaching manuals shall be of the "Second Class." In addition, the Minister of Education may order to use the "First Class" textbooks and teaching manuals for other curriculum when deems it necessary. No other kinds of books are allowed. The "authorization" of the "Second Class" textbooks and teaching manuals are given by the examiners appointed by the Minister of Education in accordance with the "Standards of Authorization" set by the Minister. The number of textbooks and teaching manuals to be authorized shall not exceed eight(8) per each curriculum (Article 12 or 19 of the Regulation).

158. As we can see from the above, contents of education are uniformly set and controlled by the government. It is questionable whether this system is consistent with the Covenant because it clearly infringes on the freedom of expression in writing and

publishing textbooks and teaching manuals.

Restriction of Freedom of Expression by Election Laws

159. In South Korea, there are a number of election laws. They are: Presidential Election Act (Law No. 3937), the National Assembly Members Election Act (Law No. 4003), Local Council Members Election Act (Law No. 4311) and The Head of Local Government Election Act (Law No. 4312). The common feature in all of these election laws is the excessive restriction on the freedom of expression of the electors. This seems to violate the Articles 19 and 25(b) of the Covenant which guarantee the "free expression of the will of the electors."

160. The election laws define the concept of "election campaign" as "any actions aimed at bringing about the election or the failure of election of a candidate" (Article 33, Presidential Election Act; Article 38, National Assembly Members Election Act; Article 38, Local Council Members Election Act; and Article 34, The Head of Local Government Election Act). The laws then limit the scope of people who are allowed to conduct "election campaign" to political parties, candidates, and registered election campaigners appointed by the candidates, and prohibit the "election campaigns" conducted by means other than those provided by the laws. Therefore, it is impossible for the people who have no qualification as an "election campaigner", that is, the ordinary people, to express their opinions in relation to the election, such as supporting a political party or a candidate, or recommending or opposing a candidate is a punishable crime. However, in reality, actions which are in support of the government or the ruling party are allowed, while those opposing the government or supporting opposition parties have frequently been subject to penalties. This has raised the question of equal treatment in the application of these laws.

161. The election for the local council members was held on June 20, 1991. Prior to the election, the Korean Federation of Clerical and Financial Workers' Unions resolved to conduct a campaign, which in reality was opposed to the ruling party and in support of the candidates of the opposition parties, under the slogan of "Let Us Not Vote for Candidates of the Political Party Which Represses the Labour Movement. Let Us Vote for the Unified Opposition Candidates." The content of the campaign was reported in the newspaper of the Federation and distributed among the membership. Because of this

action, Mr. Choi Jae-Ho, the president of the Federation was indicted and sentenced to be guilty in both the first and appeals trials for having conducted an illegal election campaign in violation of the Local Council Members Election Act (Eastern Branch of the Seoul District Court, 91-Kohap-439; Seoul High Court, 91-No-4558).

162. The general election for the National Assembly Members was held on March 24, 1992. Prior to the election, the Citizen's Coalition for Economic Justice (Kyongshillyon) conducted a survey among the candidates about their economic policies. The Coalition wanted to make public the results and analysis of the survey. However, the Central Election Management Committee prohibited the publication determining that it would violate the election laws. Such an action of the Central Election Management Committee was deemed to be restricting the free expression of opinion of electors in relation to the election, and at the same time violating the freedom of information of the people.

Freedom of Information

163. In South Korea, there is no law which guarantees the freedom of information. On the other hand, the government has a vast documentation of information about all of the individual citizens of the nation through its administrative computer network. Furthermore, intelligence and investigative agencies, such as the Agency for National Security Planning, the Military Security Command and the National Police Headquarter have a vast range of information documented on a large number of people through a wide range of methods. However, there exists no procedure for the people or the press to access the content of the information documented by the government authorities.

164. The mass media has very limited access to the various informations held by various government bodies. At the same time, the Public Prosecutor's Office, which documents and manages the investigation and trial records, frequently refuses to make public the relevant information, even to the people who are parties to the cases in question.

Right to Peaceful Assembly - Article 21

165. The freedom and right of expression are severely restricted in South Korea due to the various laws including the National Security Law and government policies. However, the demand of the people for political democratization and guarantee of basic

necessities and welfare have increased. Because of this development people have an increased necessity to express their demands thus resulting in greater friction with the government that is constantly trying to restrict them. It is in this context that the Act concerning Assembly and Demonstration (Law No. 4095 of March 29, 1989 as last amended by Law No. 4408 of November 30, 1991) has been used not so much to guarantee but rather to restrict the freedom of assembly and demonstration.

166. In May 1980, some hundreds of people in Kwangju were killed in a clash between the martial law troops of the military regime which seized power through a coup d'etat and the people who resisted the newly instated military regime. Following the massacre, the government produced a wide ranging interpretation of the old Act concerning Assembly and Demonstration (Law No. 1245 of December 31, 1962 as amended by Law No. 3278 of December 16, 1980), which prohibits "assembly and demonstration which may conspicuously cause social insecurity," to bring in anti-riot combat police into university campuses and city streets to block all assemblies, even peaceful ones, and then punish the people involved. The university students, thus deprived of peaceful and legal means of expression, began to use Molotov cocktails to protect themselves from the anti-riot combat police in an effort to obtain space and time to express their requests. Ironically, the government has responded by instituting a greater ban on assemblies and demonstrations citing the use of violence (i.e., the use of Molotov cocktails) as the reason. However, in view of the peaceful conclusion of the assemblies and demonstrations which the government had for some reason allowed, it can be easily seen that the ostensible violence of assemblies and demonstrations is in fact brought on by the arbitrary and forced prohibition and mobilization of anti-riot combat police used to prevent and suppress the assemblies and demonstrations in question.

167. The current Act concerning Assembly and Demonstration was enacted and promulgated on March 29, 1989 in response to the wide-spread criticism that the old Act concerning Assembly and Demonstration severely restricted the freedom of assembly and demonstration. The assemblies and demonstrations which are prohibited by the new law are defined as "assembly or demonstration which would clearly cause a direct threat to the public safety and order by collective violence, threat, damage, or arson, etc." (Article 5, Paragraph 1). The seemingly fundamental change of the law to allow a greater guarantee of the freedom of assembly and demonstration are in reality only

superficial. Indeed, using a technicality, and in abuse of the system of notification of assembly or demonstration explained below, the government has banned and blocked, by mobilizing the anti-riot combat police, virtually all assemblies and demonstrations which are organized by people opposed to the policies of the government and the ruling party. Consequently, even after the enactment of the amended law, the situation on assemblies and demonstrations has been maintained *de facto*. According to Police Headquarters' statistics, the police made 'notification of prohibition' in 266 out of 1,285 filings of 'notice of assembly or demonstration' in 1990, and 97 out of 737 from January to August of 1991. The banned assemblies and demonstrations were mostly critical of the government.

De Facto System of Prior Permission to Assembly

168. According to the system of notification of the Act Concerning Assembly and Demonstration persons or organizations organizing or sponsoring an outdoor assembly or demonstration are required to give a prior notice of 48 hours to the police authorities, specifying the purpose, date, place, and sponsors of the assembly or demonstration (Article 6, Paragraph 1). Then the Chief Officer of the police station of the notified place can, within 48 hours of the registration of the notification, notify the organization of a decision to prohibit the assembly or demonstration citing one or more of the following three reasons: First, it is recognized as an absolutely prohibited assembly or demonstration; Second, it is in violation of the regulations which restrict time and place for assembly or demonstration; Third, when there is a need to ban because of traffic flow considerations. If an assembly or demonstration is held in violation of the prohibition notice, then the organizers, sponsors and also participants are punishable under Article 19.

169. Utilizing this technicality of the law, the police can and in fact does make arbitrary decisions on which assemblies or demonstrations to ban. Indeed, the three criteria are so broadly conceived, that virtually any assembly or demonstration can be interpreted to fit within at least one category. It is in this way that the police authorities arbitrarily discriminate against any organization that is deemed anti-government. Furthermore, once the prohibition notice is posted, anti-riot combat police are mobilized to blockade the planned site of assembly or demonstration to prevent the beginning of the assembly or demonstration and to forcibly arrest people

seeking to participate. As we can see, the amended Act concerning Assemblies and Demonstrations was only formally changed to placate the drive for reform, and fails to deliver any guarantees to freely assemble and demonstrate peacefully. The system of notification is the *de facto* system of prior permission for assemblies, demonstrations, public meetings and rallies.

170. Even though everyone knows that these assemblies and demonstrations are banned on the basis that they are in one way or another opinionated against governmental policies, one of the most frequently cited reasons to prohibit an assembly or demonstration is that the people or groups sponsoring or organizing the assembly or demonstration have a record of participating in "violent demonstrations." Consequently, the government reasons, the assembly or demonstration in question will be "violent." However, a brief examination of the following cases will demonstrate that the government assertions are groundless.

A. On April 26, 1991, Mr. Kang Kyung-Dae, a student of Myungji University in Seoul took part in a student demonstration. During the demonstration, he and others were fleeing back into the university grounds away from the storming riot police, when he was captured by some five members of the anti-riot combat police. Mr. Kang, who had no means of self-defense, was killed due to repeated beating by the police who were using iron pipes. The incident aroused nation-wide protest demonstrations. In one such protest demonstration, on May 18, 1991, Ms. Kim Kwi-Jung, a student of Sungkyunkwan University, died when a crowd of people hurriedly fleeing from the charging police collapsed on her. The funeral march for Ms. Kim Kwi-Jung, which was permitted by the government, was held and concluded peacefully. This funeral march of tens of thousands of people was organized by the same organizations and people which the government had always prohibited from holding assemblies and demonstrations citing that they had been responsible for violent demonstrations in the past.

B. The Congress of Korea Trade Unions (Chonnohyup) is the national center for trade unions that are independent of the government and management. It is also earmarked by the government as an illegal organization which has a record of holding violent demonstrations. The various assemblies and demonstrations organized by this organization have always been subject to government ban and punishment against the

responsible officers. However, on September 10, 1991, the government gave permission to an "assembly calling for reform of the labour laws" organized by this organization to mark the membership of South Korea in the International Labour Organization (ILO). The assembly was held and concluded peacefully without any acts of violence.

C. These two examples are representative of the situation in South Korea. Furthermore, it is reasonable to conclude that the violence in the demonstrations stems not from inherent "violent tendencies" of the participating organizations, but rather as the direct result of government repression and use of force to end protests.

D. Furthermore, even though the law stipulates the process of challenging the decision of the police to prohibit an assembly or demonstration, in reality there is no recourse once the ban has been issued. According to the Act concerning Assembly and Demonstration, organizers of an assembly or demonstration can challenge the validity of the police decision to prohibit the event by filing an appeal with the mayor of the city in question. If the appeal is dismissed by the mayor, the organizers can then file an administrative litigation with the High Court (Article 9). These are the formal channels by which a ban can be challenged. In fact, a mayor rarely overturns the notification of prohibition. Consequently, the organizers are forced to file a litigation with the High Court, which can take several months. Therefore, by the time a decision is handed down, many months after the projected date of assembly or demonstration, even if the decision is favorable it becomes absolutely meaningless. Thus, even though there are formal channels to challenge a ban, the reality is that there is no recourse to hold a legal and peaceful assembly or demonstration once the government is set on banning it. This law can therefore be seen as a system of "permission," rather than a system of "prior notification," as its name indicates.

Blockade from the Source

171. Once a prohibition notice has been issued, in virtually all cases, thousands of anti-riot combat police are dispatched and stationed at the planned site of the assembly. The police then proceed to prevent, block, or arrest the people trying to attend the assembly. This is called "blockade from the source"(Wonchonbongshae).

172. The process of "blockade from the source" involves body search without warrant,

firing of tear gas, or arrest and confinement in police stations. Or sometimes people are put on police buses and dropped off in far flung outskirts of the city. Sometimes the police even extends the blockade to airports, railway stations, bus terminals, and major roads to check and restrict the movement of the people who are likely to participate in the assembly.

Use of Indiscriminate Violence in the Suppression of an Assembly

173. As can be seen from the cases of Kang Kyung-Dae and Kim Kwi-Jung, once the government has declared an assembly or demonstration illegal, then heavily equipped anti-riot combat police are mobilized to suppress the demonstration in an aggressive and violent manner leading to a large number of injuries and cases of deaths. In the course of the suppression of an assembly or demonstration, heavy barrages of tear gas are fired, iron pipes and shields are used as weapons for beating the demonstrating crowd, and sometimes even rocks are thrown at the defenseless crowd. Furthermore, there are cases of firings of firearms, including small hand-held weapons and M16 automatic rifles.

174. On March 19, 1990, the National Police Headquarters issued a guideline to all police stations on "tactics of suppression of demonstration and improvements in equipments". The substance of the guideline is as follows: First, the former "two steps forward, one step backward" march of the anti-riot combat police is abandoned, and instead, they are to "advance continuously" into the ranks of the demonstrators: Second, the areas of the body allowed to be hit by the police is broadened: Third, police are to be aggressive in the capture and arrest of demonstrators: Fourth, police are to be armed with extended length truncheons and are to use shields for attack.

175. In October 1990 the government declared a "war on crime" and also issued new guidelines for action against collective demonstration. The major points are as follows: First, in cases of attack of state facilities, such as a police station, by a demonstrating crowd, police may respond boldly by using firearms: Second, in case of a street demonstration, police are to orient the suppression action for capture rather than dispersal: Third, in cases where Molotov cocktails are thrown, police are to chase to capture the thrower.

Arbitrary Interpretation in Criminal Punishment

176. The way the Act concerning Assembly and Demonstration was applied in the so-called "Korea Broadcasting System Trade Union Protest Case" in April 1990(See Paragraph 147) is a prime example of arbitrary interpretation of the law in "bad faith."

In April 1990, the members of the Trade Union of the Korea Broadcasting System, the government owned television and radio network, launched a strike to protest the dismissal of the existing Directing Manager, who had been appointed with the participation of the employees and the appointment of a new Directing Manager that appeared to be subservient to government policies. As a result of the strike, 13 members of the union were arrested. Included in the charges against them was holding an assembly without prior notification. However, during the period of strike, the union gave notice of all the assemblies held outside the building of the company and did not give notice of the assemblies held inside company grounds. The prosecution indicted them for holding an assembly in the grounds (not inside the building) of the company, where all employees were free to move and gather. At the trial of the first instance by the Southern Branch of the Seoul District Court, the trial of the second instance by the Seoul Criminal District Court, and the trial at the Supreme Court, they were found guilty of violating the Act concerning Assembly and Demonstration.

Ways of Reform

177. The following measures are necessary to institutionalize a guarantee of the right and freedom of assembly: First, the overly restrictive regulations of the Act concerning Assembly and Demonstration must be amended to prevent arbitrary and discriminatory ban by police authorities. This can be partly achieved by specifying and narrowing the meaning of the key terminology utilized in the law. Second, the system of notification, which is used as a system of prior permission for assemblies, must be amended to facilitate a fair and effective way to challenge an unfavorable decision. Third, the method of "blockade from the source," which prevents assemblies from being started, must be disallowed. Fourth, assemblies and demonstrations should not be presupposed to be unlawful before they have taken place. Thus, in case a demonstration or assembly violates the law, it should be dissolved or punished only after it has taken place. Fifth, in cases of necessary dispersal, force used should not reach a level where lives are threatened. This requires a reform and institutionalization of a new

method of dispersal.

Right to Participate in the Politics - Article 25

178. As mentioned in Paragraphs 302 through 307 of the government report, South Korean law guarantees the rights to participate in politics. However, in reality, such rights are violated.

179. South Korean laws seriously violate freedom of expressing political views by totally prohibiting any political activities of Labour unions. Article 12 of Labour Union Act (Law No. 1329 of April 17, 1963 as last amended by Law No. 3966 of November 28, 1987) prohibits a labour union from supporting a particular political party or conducting activities to help a particular person get elected in a public election, collecting political funds from its members, or appropriating the union funds to political funds. Violators are punishable with imprisonment up to five year (Article 45-2). Political Funds Act (Law No. 3302 of December 31, 1980 as last amended by Law No. 4463 of December 31, 1991) also prohibits labour organizations from providing political funds(Article 12). Violators should be punished with imprisonment up to three years or a fine of up to five million Won, and the funds provided should be confiscated(Article 30). However, under the laws of South Korea enterprises, employers and their organizations are permitted to conduct political activities and to offer political funds to the political parties or politicians. They actually have considerable effects on the policies of political parties and politicians. The restrictions on the right to political activities applying only to labour unions appear to violate the principle of equality, as well as the right of labourers to participate in politics.

180. The various election-related laws, including the National Assembly Members Election Act (Law No. 4003 of March 17, 1988 as last amended by Law No. 4462 of December 31, 1991), stipulate that all elections should be held under strict procedures under the monitoring of a neutral Central Election Management Committee. Representatives of the candidates of both the ruling party and opposition parties, as well as the officers of the Central Election Management Committee, are allowed to be present in the voting stations and counting halls during the elections to counter any irregularities (Articles

99 through 121 of the National Assembly Members Election Act). However, the various elections laws fail to provide any means to guarantee free voting for soldiers and other persons who vote through the absentee ballot. The laws do not allow the presence of officers of the Central Election Management Committee or representatives of the political parties engaged in the election in the military. Therefore, there is no facility or mechanism to guarantee voluntary, secret voting in the military. Following the recent March 24, 1992 general elections for the National Assembly, a large number of soldiers and officers in the army have testified that the military authorities have pressured the soldiers, through various methods, to vote for the ruling party candidates. The number of absentee votes of soldiers serving in the military is more than 550 thousand. If the testimonies and claims of some of the soldiers are true, then the actions of the military authorities are in violation of Article 25 of the Covenant. Military authorities have repeatedly denied the accusations and have demonstrated little in way of indication that they are undertaking a thorough and impartial investigation.

181. Local government systems and elections for various levels of local government have been suspended in South Korea since the military coup d'etat in May, 1961. The heads of various levels of local governments have been appointed by the President and local councils have ceased to exist. However, the Local Autonomy Act(Law No. 4004 of April 6, 1988 as last amended by Law No. 4464 of December 31, 1991) states that the elections for local councils should be held by June 30, 1991 and that the elections for the heads of the various levels of local governments should be held by June 30, 1992. Elections for regional councils were held in the first half of 1991 in accordance with the law. However, on January 10, 1992. the President declared that the elections for heads of local governments would not be held in 1992 despite the provision of the law. The presidential measure can be seen as a violation of the "right to participate in politics directly or through freely elected representatives" and the "right to be elected as heads of local governments."

182. The National Members Assembly Election Act adopts a minor electorate system under which one congressman is elected in each electorate. The number of electors differs from electorate to electorate to the utmost, which raises an issue of inequality in the voting value of electors in different electorates. For example, in the March 24, 1992 general elections, 238,346 electors in the electorate, "Kuro Kap" elected one

congressman, while 51,770 electors in the electorate, "Changheung" elected one congressman. We can see that the voting value of an elector in Changheung is about five times the voting value of an elector in Kuro Kap. Even though electorates have to be determined considering geographical factors as well as the population, such a serious inequality in the voting value of electors in different electorates should be considered to violate equal suffrage guaranteed under Article 25(b) of the Covenant.

PART IV

Right to Life - Article 6

183. In South Korea there have been many questionable deaths with unknown causes since 1980. The victims of these cases were mostly university students or workers involved in anti-government activities. Although these cases reveal some circumstantial evidence pointing to the involvement of the governmental agencies, South Korean investigative agencies have claimed, in most of them, that they were suicide cases. Families and friends of the victims have raised many doubts over the official declarations.

184. The government report states that the "crimes subject to the death penalty are strictly limited to crimes that threaten the very existence of the State such as an insurrection, heinous crimes such as a murder and other designated felonies" (See Paragraph 103 of the government report). In reality, the death penalty may be imposed on a wide range of crimes. The Criminal Code contains 18 provisions which stipulate the death penalty; the Military Criminal Code Law No.1003 of January 20, 1962, as last amended by Law No.3699 of December 31, 1983 stipulates the death penalty in 45 articles. The National Security Law stipulates the death penalty for more than 50 types of crimes. In addition, the Act Concerning Additional Punishment for specified Crimes (Law No. 1744 of February 23, 1966 as last amended by Law No.4291 of December 31, 1990) the Act Concerning Punishment of Violent Crimes (Law No.625 of June 20, 1961 as last amended by Law No.4294 of December 31, 1990), the Special Act Concerning the Regulation of Crimes Against Health (Law No.2137: of August 4, 1969, as last amended by December 31, 1990 and the Narcotic Control Act(Law No. 440 of April 23, 1957 as last amended by Law No. 4222 of April 1, 1989), all stipulate the death penalty. Article 93 of the Criminal Code (crime of taking side with enemy and a total of 13 Articles in the Military Criminal Code allow only the death penalty. This penal system, which stipulates the death penalty for a wide range of crimes, is arguably inconsistent with the Article 6, Paragraph 2 of the Covenant, which allows the death penalty "only for the most serious crimes." At the same time, this severe system can be seen as the structural cause for the excessive penalty resulting from criminal trials.

185. According to a Supreme Court report presented to the National Assembly, the number of trials of the first instance ending in death sentence was 36 in 1990, and 16 during

the January-August period in 1991. Excluding one case of violation of the National Security Law, the death penalty resulted from cases of the following categories of crimes : murder; arson; robbery and murder; robbery and manslaughter; robbery and rape; etc. Generally speaking the number of cases where the prosecution demands or the court delivers the death sentence does not seem to be decreasing.

186. Following the government declaration of "war on crime", late in 1990, most of the trials in which the death sentence was expected were conducted in severely oppressive conditions, rasing the criticism that the defendants' right to a fair trial was not fully guaranteed.

187. The Code of Criminal Procedures stipulate that, once the death penalty has been confirmed the execution should take place within five days after the Minister of Justice orders it, and the minister should deliver such an order within six months after the confirmation of the penalty(Articles 465 and 466). However, the law fails to set the waiting period between the final confirmation and its execution. Persons with confirmed death penalties may in reality be deprived of the right to the re-trial. There have been a number of political cases where the execution was carried out immediately following the confirmation of the sentence, violating the right to appeal/apply for the amnesty, pardon, commutation of the sentence, or re-trial.

188. The right to life of South Korean workers is threatened continuously in their everyday lives. Because of the rapid economic growth based on severe working conditions and extreme labour intensity, South Korea has experienced the highest rate of industrial accidents in the world. According to the statistics of the Ministry of Labour, the number of workers who were killed or injured due to industrial accidents, or ho suffered industrial diseases in the enterprises which are covered by the Industrial Accident Compensation Insurance Law(Law No. 1438 of November 3, 1963 as last amended by Law No. 4111 of April 1, 1989) are shown on the table bellow. The figures do not contain records of accidents in small enterprises which are not covered by the Law.

	1987	1988	1989	1990	1991
workers / insurance	5,350,546	5,743,970	6,687,821	7,542,752	7,490,301

total victims	142,596	142,329	134,127	132,893	128,169
deaths	1,761	1,925	1,724	2,236	2,299
injuries	139,212	138,254	130,842	129,019	124,333
occupational disease	1,623	2,150	1,561	1,638	1,537

189. According to the Ministry of Labour, in 1991, the total number of workers who were receiving medical treatment as official victims of industrial diseases was 7,742. Specifically, 3,987 were suffering from lung disease, 3,534 from loss of hearing, 1 from dangerous radiation, 197 from heavy metal poisoning, 17 from poisoning by cyclohexane and 6 from poisoning by certain chemicals. These figures are widely criticized by the trade unions as not showing the reality because the government standards for recognition of an industrial disease are too strict and time consuming to determine.

190. Another area where workers are continuously exposed to life-threatening situations is work on ships. Sailors, due to the nature of their work, are exposed to great dangers. Furthermore, the working conditions are extremely hazardous. This is brought about by bad working and sanitary conditions, and violent treatment used to increase Labour intensity. Many sailors have died or disappeared during their repeated attempts to escape from the ship. Most of the cases of death in ships, except those involving a crash or sinking, are rarely categorically clear, and are usually declared safety accidents or suicides. The unclear circumstances of many of the deaths have raised repeated protests from the families of the victims. The following table was prepared with official information from a report submitted to the National Assembly by the Ministry of Labour. Because workers on ocean going ships have insufficient legal protection, many times they find themselves victims of forced Labour(See paragraph 258).

	Deaths	Missing	Total
1990	423	375	798

1991 (Jan.- Aug.)	295	287	582

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Prohibition of Torture and the Right to Liberty and Security of Person - Articles 7 and 9

191. The Constitution of South Korea, the Code of Criminal Procedures (Law No.341 of September 23, 1954, as last amended by Law No.3955 of November 28, 1987) and the Police Officers' Duty Performance Act (Law No. 3427 of April 13, 1981 as last amended by Law No. 4336 of March 8, 1991) prescribes criminal procedures, aiming at the prohibition of torture and the protection of the right to liberty and security of person, to be performed under due process. But frequently torture and inhuman treatment are inflicted on the detainees in the process of law performance. Coercive interrogation and trial under detention are common. In view of these facts, the rights, declared by the Articles 7 and 9 of the Covenant are not fully actualized in South Korea.

192. In South Korea, suspects are frequently subject to torture and other cruel, inhuman or degrading treatment during interrogation. In the past, water torture, electric torture, etc., directly influencing on life, were committed widely. Many kinds of cruelties, such as beating with stick, fist or foot, intimidation, sleep deprivation, standing for a long time, investigation in nakedness and contempt still exist. Particularly from 1990 to 1991, many people were arrested on the suspicion of forming an "anti-State organization" or an "enemy-benefiting organization" under the articles 3 and 7(3) of the National Security Law (See the statistics in Paragraphs 116 to 119). In these cases, where confessions of the suspects are main evidences, suspects were reportedly suffered from severe tortures.

193. Mistreatments including torture are performed by almost every investigative agencies, such as prosecutors' office, the police, the Agency for National Security Planning, the Military Security Command and the agencies on drug. Above all, the Agency for National Security Planning, which is extensively empowered to investigate the National Security Law cases under the Agency for National Security Planning Act(Law

No.3313 of December 31, 1980, as last amended by Law No.3492 of December 31, 1981), has been criticized as a main violator of human rights. According to the ANSP Act, the Agency, which is under the direction solely from the President, is exempted from control of the Board of Audit and Inspection and the National Assembly. Naturally there are no agencies to investigate fairly the violations of human rights committed by the Agency in spite of so many claims of torture made by the suspects.

194. Criminal procedures in South Korea start from forcible taking-out of the suspect and following detention under the *ex post facto* warrant of arrest. Confessions obtained by compelling the suspect during the detention incommunicado for a few days become the ground of the application to and the issuance of the warrant of arrest by the court. The judges are inclined to issue the warrants in most cases by widely interpreting the premise of arrest, "when there is reasonable ground to suspect that the person may destroy evidence or may escape"(Articles 70 and 201 of the Code of Criminal Procedure). Once arrested, a suspect may be interrogated under detention for a maximum of 30 days in ordinary criminal cases and 50 days in the National Security Law cases. This system, under which suspects are easily arrested and confined for a long time, becomes a foundation of tortures and various human rights violations.

195. The authority over interrogation is not separated from the authority over detention. Suspects, arrested by the police or the Agency for National Security Planning, are interrogated by same agencies which is detaining them for the first 10 days(ordinary criminal cases) or 20 days(the National Security Law cases), in addition to the period of illegal confinement before the issuance of the warrants of arrest. The investigative agencies, therefore, can investigate the suspect at any time during the period of detention and possibly fall into temptation to treat him harshly, when he does not confess or cooperate. After this period, the suspect is transferred to the detention center or the alternate detention facility in the police station and is interrogated by a prosecutor for 20 or 30 days. Mistreatments may not be effectively prevented from during this period because these facilities are under the direction of the prosecutor. The non-separation of these two functions seems the main cause of wide spread compelling the confession with torture or sleep deprivation during the interrogation.

196. The prosecutor is obliged to inspect the detention places(para. 133 of the

government report). However, even the prosecutors are accustomed to obtaining confessions from illegal arrest and detention before the issuance of the warrant of arrest. Furthermore, the prosecutors do not inspect the Agency for National Security Planning or the Security Division of the National Police Headquarters, which detain suspects under the National Security Law without official detention places. But in fact, these agencies have not been under the inspection nor supervision of the prosecutor.

197. As explained in the part regarding the right to a defence counsel (See Paragraphs 80 to 95), suspects are frequently denied to communicate with their families and even defence counsels during the period of detention. This prevention of the detainees' contact with a fair third party or other civilians constitutes an important factor for tortures or other mistreatments and their concealment.

198. When the case of torture or mistreatment in the investigative agencies is revealed, the government usually deny the fact and the prosecutors' office seldom investigates the case. Under the 5th Republic(1980-1987), in the three most typical cases of torture, the electric torture on Mr. Kim Keun-Tae, the sexual torture on Ms. Kwon In-Suk, killing by water torture of Mr. Park Jong-Chul, the public prosecutors' office always tried to conceal or reduce the incidents in order to shelter the torture criminals. In case of Ms. Kwon In-Suk, all the governmental agencies manipulated the fact and propagated that she was lying to discredit the government. In 1989, a painter, Hong Song-Dam was arrested on the alleged violation of the National Security Law and tortured cruelly in the Agency for National Security Planning (See Paragraph 104). He filed a complaint for the torture inflicted on him to the Seoul District Prosecutors' Office with the portrait of the torturer drawn by him. To our disappointment, however, we do not have any information of the investigation of the case by the prosecutors' office. In February 1991, Mr. Park Duk-Jun and his colleagues, who were arrested and tortured by the Agency for National Security Planning for their allegedly forming an "enemy-benefiting organization", filed a complaint to the same prosecutors' office against the investigators who tortured them. The investigation on this case does not seem to have started.

199. In general, the court are very reluctant to investigate the fact in spite of the accused's claims of the forced confession by torture or mistreatment. The court usually

accepts the accused's confession as evidence and finds them guilty unless the accused themselves prove the fact of torture or other mistreatment. In particular, this trend is distinguished in the cases relating to the "public security" such as the National Security Law cases. For example, the Supreme Court upheld the lower courts' guilty sentences under the National Security Law by ruling that there were no evidences to prove that the accused had been tortured and there were no causal relationship between the accused's confession and the long term detentions in the case where the accused had claimed the forced confession from 40 days illegal detention by the Military Security Command(October 23, 1984, 84-Do-1846) and in the case where the accused had made forced confession for 75 to 116 days of illegal detention by the Agency for National Security Planning(November 27, 1984, 84-Do-2252). This established attitude of the Supreme Court on the probative value of the confession tends to make the accused and even the lawyers to give up defense once the confession was made. These cases are caused by the vague stipulation of the Constitution(Article 12(7)) and the Code of Criminal Procedure(Article 309) which state that "in cases where a confession is deemed to have been made against the defendant's will due to torture, violence, intimidation, unjustifiably prolonged arrest, or deceit,etc., such a confession shall not be admitted as evidence of guilt", which may be construed as if the confession may be made voluntarily even when the defendant has been suffered from torture or other mistreatments and such voluntarily made confession may be accepted as evidence.

200. As previously explained, investigative agencies forcibly take suspects under the name of so called "voluntary submission into police custody" and interrogate them for about 48 hours. The warrant of arrest is issued based on the confessions obtained by this interrogation and if the request for the warrant of arrest is rejected by the court, suspects are released(paragraph 150 of the government report). This practice of the "voluntary submission" has been criticised as the origin of all human rights violations including illegal arrest and detention, compelling confession and mistreatments but the investigative agencies do not refrain from using it. In addition, suspects are rarely notified of the charge and the reason of arrest. The infringement of suspect's right to be notified can not be a cause to order the release of the suspect by the court. For these reasons, this illegal custom is not removed and the right, recognized in Paragraphs 1 and 2 of the Article 9 of the Covenant, is infringed. In particular, suspects arrested by the Agency for National Security Planning are usually

detained in the basement and completely isolated from contact with outside. The Agency compels the suspect to confess under the oppressive atmosphere. During the interrogation, the suspect is deprived of sleep, prohibited contact with family and even access to and communication with lawyers.

201. The agency requests a warrant of arrest to the judge through a prosecutor. The judge formally examines the investigation documents made unilaterally by the agency and issues a warrant of arrest. Few of the suspects have the chance to submit favorable evidences to the judge directly or through a defence counsel. Because the judge is not allowed to question the suspect when the judge decide on the issuance of the warrant, the warrant may be issued based on the suspect's forced confession by torture or other mistreatments.

202. The police, including the Agency for National Security Planning and the Military Agency, are able to interrogate the suspect under detention for 10 days from the date of execution of the warrant of arrest and in the case of the National Security Law the detention period may be extended for another 10 days with the permission of the court. After the transfer of the suspect to the prosecutor, the prosecutor may extend the period of detention for 10 days(in the ordinary criminal cases) or for 20 days(in the National Security Law cases) in addition to the original 10 days detention period. Thus the whole pre-trial detention period for interrogation may be extended to 30 days or 50 days except the period of illegal detention. It seems so difficult for a suspect to endure this prolonged detention period without confessing the fact of crime under oppressive atmosphere sometimes coupled with torture, mistreatments and/or compelling he confession.

203. The court does not refrain from approving the extension of the detention period.(See paragraph 153 of the government report). The court approves the extention without careful examination, adding only a perfunctory reason like "continued interrogation is needed" or "detention is necessary to be continued". Meanwhile the limitation of the whole detention period for trial(6 months for the trial in the first instance, each 4 months for the trials in the second instance and the Supreme Court respectively) is sometimes misused to violate the rights of the accused. The first hearing of the trial in the first instance or in the appeals court is held about two or

three months from the date of indictment or appeal and hearings are held at intervals of two through four weeks, and thereby the whole period of detention finishes, in a complicated case, before the defendant is not given enough time to submit favorable evidence. In such a case, the court usually closes the hearing by rejecting all the applications to investigate favorable evidence on the part of the defendant and delivers guilty sentence instead of giving chances to the defendant to submit favorable evidence by ordering the release of the defendant.

204. Recently, the Ministry of Justice has proposed a bill to amend relevant articles of the Code of Criminal Procedure for the purpose of extending the detention period. According to the bill, the prosecutor may extend the pre-trial detention period for additional 10 days in some felony cases and each of the court of the first and the second instances and the Supreme Court may extend the detention period for trial for additional 2 months respectively, thereby the pre-trial detention period for interrogation becomes 40 days in total and the detention period for trial becomes 8 months(in the first instance) and 6 months(in the second instance and the Supreme Court). This means that the whole detention period for trial is increased to 20 months in total from the present 14 months. In case the bill is promulgated, it is expected to deteriorate the human rights situations much worse.

205. Practically in South Korea, the investigation and the trial are performed on the base of the "principle of detention". According to the statistics on the criminal cases in 1990 and in 1991(from January to August), we come to understand that the warrants of arrest are so easily issued, that, once arrested, rate of release on the review of legality of the arrest or on bail is quite low and that the rate of the release becomes lower in the cases related with the "public security" like those under the National Security Law.

Year \ Ctgry	Request for Warrant	Issuance of Warrant	Rejection	Rate of Issuance
1990	146,458	134,553	11,905	91.9 %

1991	93,509	86,571	6,938	92.6 %

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Year \ Ctgry	Indictment	Indictment under Detention	Rate of Indictment under Detention
1990	89,235	65,417	73.3 %
1991	95,578	66,389	69.5 %

Year \ Section \ Case		NSL	AAD	FBCA	LDAA
1990	Request of Warrant	514	539	555	153
	Rate of Issuance	505 (98.2 %)	515 (95.5 %)	523 (94.2 %)	144 (94.1 %)
	Indictment	414	413		
	Indictment under Detention	393 (95.2 %)	357 (86.4 %)		
1991	Request of Warrant	289	370	253	137
	Rate of Issuance	289 (100%)	359 (97.0%)	248 (98.0%)	135 (98.5%)

	Indictment	265	364		
	Indictment under Detention	247 (93.2%)	321 (88.2%)		

* NSL : National Security Law
* AAD : Act Concerning Assembly and Demonstration
* FBCA : Fire Bomb Control Act
* LDAA : Labour Disputes Adjustment Act

206. The suspects who are detained under the warrant of arrest may request a review of the legality of the arrest to the court(para. 155 of the government report) and the accused who are indicted with detention may file a request of release on bail(para. 154 of the government report). However, illegally detained suspects do not have any legal remedies for their release. Because the proceedings of the review of the legality of the arrest begin only on the base of the request by the detained suspects, their family or lawyer, which means that those who do not informed of this procedure are deprived of the chance to be released. In case of release on bail, there are wide range of exceptions for which release on bail may be rejected. Thus, the principle of non-detention interrogation or trial is not respected in reality. the table below shows the statistics on the number of detained people under the warrant of arrest and those who have been released on the review of the legality of arrest or on bail.

		detainees	* 1	(rate of) release	indictment under detention	request for bail	(rate of) release on bail
90	total	134,553	10,617	5,630 (53.1%)	65,417	36,243	21,079(58.2%)
	NSL	505			394	49	11(22.4%)

	AAD	515			357	126	57(45.2%)
91 (Jan -Aug.)	total	86,571	7,602	3,824 (50.5%)	66,389	26,003	14,865(57.2%)
	NSL	289			247	23	2(8.7%)
	AAD	359			321	62	19(30.6%)

*1 : application for review of legality of arrest

207. According to the Article 97 of the Code of Criminal Procedure, prosecutor immediately can appeal to the order of release on bail by the court and the defendant is not released till the decision of the higher court. In 1990, the order of release on bail were revoked in 12 cases among 78 appeal cases during the period from January to August 1991, 6 cases of the release on bail were revoked among 53 cases. In view of these facts, in most cases, appeals by the prosecutors to the order of release were made without legal reasons and resulted in the prolongation of the detention.

Humane Treatment of Inmates - Article 14(2), 3(b)

208. The inmates in South Korea, both those whose sentences have been confirmed and those who are still pending trial, receive treatment not fully respectful of their human dignity. The basic law governing the treatment of inmates is the Penal Administration Act (Law No. 105 of March 2, 1950 as last amended by Law No. 2437 of January 15, 1973). This law and other related decrees and regulations fall short of the standards stipulated in the "Standard Minimum Rules for the Treatment of Prisoners," which the United Nations encourages all member nations to observe, and many practices in inmate treatment are outright inhumane. Most of the inmates suffer under terrible prison conditions which fail to meet the guidelines outlined in Article 10 of the Covenant. Maltreatment includes frequent violence and brutal punishment inflicted upon inmates by the prison guards. Such inhuman treatment is also caused by indifference and lack of concern on the part of the state and prison authorities.

209. The violation of inmates' human rights is indeed very serious. Because of this, Lawyers for a Democratic Society, the Human Rights Committee of the National Council of Churches in Korea, the Council of Families for Democratic Movement (Mingahyup), and Physicians for Humanism, in September 1990, jointly formed the Committee for the Defense of Human Rights of Prisoners. This organization, the Korean Federal Bar Association and other human rights organizations have conducted and continue to conduct various researches and campaigns on the cases of serious violation of inmates' human rights.

General Situation

210. Article 62 of the Penal Administration Act provides that the law and the regulations which apply to inmates whose sentences are confirmed should generally apply *mutatis mutandis* to the inmates whose cases are still pending trial. Therefore, many of the rights of inmates who are still under trial are restricted in the same manner as the convicted inmates. Accordingly, those who are still under trial are deprived of their rights "to be subject to separate treatment appropriate to their status as unconvicted persons" and of their right to be presumed innocent that is guaranteed by the Covenant in Article 14, Paragraph 2.

211. In principle, all inmates are to be housed in a single-person cell. However, in most of the criminal cases, inmates are kept in multi-person cells, while most of the political prisoners are kept in single-person cells. The cells are too small and confined compared to the number of inmates and are unclean and unsanitary. According to a survey of the Committee for the Defense of Human Rights of Prisoners, multi-person cells are usually 11.1 to 16.5 square meters. Some 15 to 20 persons are housed in each of these cells, allowing a space of 0.55 to 1.1 square meter per inmate. A single-person cell is only 2.4 square meters. Because of the very restrictive and confined space, violence among the inmates has been very frequent. It is not unusual for the inmates who are convicted of violating the National Security Law to be confined to single-person cells for many years.

212. Most of the cells are not equipped with septic toilets. And due to lack of frequent cleaning and disinfection treatment, most of the cells are full of stench, worms and flies. Most prisons do not have bath tubs or shower facilities. Most inmates are allowed to clean their bodies about once a week, for five minutes using a small

quantity of water.

213. Most of the detention facilities do not employ qualified nutritionists or cooks. The prisoners maintain that the food is handled in an unsanitary manner, that the quality of the food is inferior, and that they are not provided with a balanced diet.

214. Thin rubber shoes and indoor clothes and outdoor work clothes made of thin blue-colored textile are provided to the inmates for year-around wear. Prisoners are supposedly allowed, at their own expense, to purchase and obtain clothing and bedding. However, in reality, the only in-door and out-door clothes allowed by the authorities to be purchased is limited to the rudimentary Korean traditional dress ("hanbok") provided by the prison. Prisoners have to wear their prison clothes at all times, even when they go out of the prison for their trial sessions. Convicted male inmates have to have their hair cut very short. These rules make certain that it can be easily seen that they are inmates.

Rules/Discipline and Punishment

215. The most inhumane treatment of the inmates can be seen in the punishments within prisons. Article 46 of the Penal Administration Act allows specifically nine kinds of punishments on the prisoners: warning, up to a 3 month ban on reading, ban on work, up to a 5 day ban on exercise, cancellation of a part or whole of allowance gained through work, up to a 2 month ban on work, up to a 2 month ban on visits and letters, up to 2 months of solitary confinement, and up to 7 days of reduction in food. "Solitary confinement" refers to confinement to a very small and dark room which has no windows, commonly known as the punishment cell. It is also common for the inmates who are sent to this punishment cell to receive bodily pain through the use of various instruments. "Reduction in food" means the provision of one-half or two-thirds of the ordinary serving of food while being kept in the punishment cell. Solitary confinement and reduction in food are considered inhumane. However, a more serious problem is the frequent torture and violent treatment conducted by prison authorities, in complete disregard for the regulations of the Penal Administration Act.

216. According to the regulations on discipline and punishment stipulated by the Ministry of Justice, the body which supervises the execution of punishment, inmates are

not allowed to move around or to sleep as they wish: they must obtain prior permission to obtain or to read books. If they disobey these rules they can be punished. Those who are being punished with a reduction in food or with solitary confinement cannot use their bedding except for the time set aside for sleep, and they must sit cross-legged in an up-right position during the waking hours, except for the body cleaning time and the meal time. These regulations which unnecessarily severely restrict the inmates' freedom of movement and inflict great bodily suffering are clearly inhumane.

217. General punishment and other cruel and inhumane methods of punishment are often used as retaliatory measures against inmates protesting unfair treatment. Article 14 of the Penal Administration Act allows for the use of 4 kinds of instruments, i.e., rope, handcuffs, chains, and muzzle, to prevent escape, violence, riot, suicide, and on "other necessary occasions." There is no detailed regulation about the use of these instruments except for limitation of 9 hours for the use of the muzzle. Often this limitation is not observed. These instruments, therefore, are abused as tools of corporal punishment. In some serious cases of violence by prison guards, inmates are tied up completely with rope, handcuff, and muzzle and then put in the solitary punishment cell. The more serious problem is that severe violence is commonly conducted in the name of punishment in an arbitrary manner without any process of investigation and decision by a disciplinary committee.

218. Article 145 of the Enforcement Decree of the Penal Administration Act stipulates that ban on exercise, solitary confinement, or reduction in food requires a prior prognosis by a medical officer that these punishment would not be unduly harmful to the health of the inmate. Furthermore, the inmates who are subjected to solitary confinement and reduction in food must receive regular health checkups by a medical officer. However, in most cases no such medical action is taken. Even when checkups are given, it is usually conducted in a purely cursory, procedural way. There have been cases in which a prisoner's petition for medical treatment was denied because he was under punishment and which resulted in his death.

219. There exists no avenue of procedure for the inmate to protest against or to contest the imposed punishment. According to the Penal Administration Act and relevant decrees, punishment is to be decided by a disciplinary committee. A disciplinary committee is to

decide the appropriate action to be taken within three days of the reception of the request for punishment. However the inmate against whom a punishment is requested are not given a proper opportunity to collect or present evidence in his favor or to defend himself. Furthermore, he has no means to challenge the punishment decided on by the disciplinary committee. In the current legal system, the only recourse for an inmate if he wants to challenge the decision of the disciplinary committee, is to file an administrative appeal or litigation. However, this process takes much time and money, and meanwhile the punishment is already carried out (Article 145 of the Enforcement Decree). Thus, inmates are outside the protection of the law.

220. On July 5, 1990, Mr. Bae Young-Tae, imprisoned at the Masan Prison was prevented from meeting his wife who had come to visit him. He shouted in protest to be allowed to see his wife. As a result of his protest he was taken to the basement, his hands and legs were tied up, and beaten. When other inmates found out about this, some 30 inmates including Mr. Lee Seung-Pil and Mr. Lee Jae-Ku, protested. In response, some 100 prison guards dragged the protesting inmates out into the prison ground, put on handcuffs, tied their arms around the elbows, and bound their ankles with handcuffs. Then the guards linked the tied arms and ankles behind their backs so that their backs were arched out and bent backwards. Through this kind of torture, the guards coerced them into signing a note not to repeat any protests. The prisoners who refused to sign were further tortured by the guards who repeatedly lifted and dropped the rope that linked the arms and legs behind the prisoners' backs. Most of the prisoners who had protested suffered severe injuries from this "hair pin" torture.

221. On December 19, 1990, when the inmates of Mokpo Prison who went out to work in a factory returned to their cells, they were subjected to the usual body search. During the search, a lighter, a prohibited item, was discovered in the pocket of Mr. Hahn Seun-Min. The prison guards, headed by the security chief, forced the 48 prisoners into a bathtub filled with ice cold water. If they crawled out unable to endure the cold, they were hit with wet towels. Later in the night, around 10 p.m., inmates were dragged out to the ground and forced to be naked. Then the prison guards poured cold water over them, hung them upside down, and beat the sole of their feet. Prisoners were also inflicted with the "roast chicken" and "hair pin" tortures.

Sanitary and Medical Conditions

222. Articles 23 to 30 of the Penal Administration Act and Articles 92 to 106 of the relevant enforcement decree include specifications on sanitary and medical conditions. What is included in them, however, are very rudimentary and insufficient. The laws fail to specify the qualifications and number of medical officers, the required facilities for prenatal and postnatal care and treatment in the women's prisons, the required facilities for children, and the duties of and standards for the medical officers.

223. According to a report by the Committee for the Defense of Human Rights of Prisoners, in January 1990 there were in the Medical Section of the Seoul Detention Center, where some 1,500 prisoners were being held, one medical practitioner and some, non-medical practitioner staff. There was also one part-time circuit physician and one part-time circuit dentist. The circuit doctor makes a round of the cells, without even a stethoscope, examining the inmates only with his eyes. At nights, no medical personnel is on duty at the prison. Many of the inmates have testified that the examination and treatment are rudimentary and that they were simply ignored even when they complained of serious illnesses. Inmates have testified that they were made to feel insulted during physical examinations. When inmates, or their families, or even their defense attorneys request for an examination by an outside physician, their request is sometimes refused by the prison authorities despite the existence of a legal provision which allows for this. Furthermore, most of the inmates are ignorant of their rights and continue to be mistreated because the prison authorities fail to inform them of their rights.

224. Prisoners are required to use common utensils and razor blades for shaving. This practice makes the inmates vulnerable to various skin and contagious diseases.

225. Prisoners who suffer from diseases are given medication usually 2 or 3 days after medical examination. Sometimes medication is delayed by more than a week. Furthermore, the giving of prescriptions is very standardized so that in many cases, the same kind of medicines are given for two entirely different kinds of illnesses.

226. Despite the atrocious conditions in the Seoul Detention Center, they are far better than those in other prisons. On March 17, 1990, Mr. Shim Jae-Min an inmate of the

Chungju Prison complained of a severe headache. The prison guards gave him some 50 tablets of an anodyne called 'Rubiking'. Following the intake of some tablets of medication, he complained of a severe stomachache and asked to be taken to the medical office. He was refused, however, because he was under punishment at the time. He was left by himself in pain and later died.

Meetings and Correspondence

227. Meetings with defense attorneys are discussed in Paragraphs 80 to 95.

228. Inmates, whether already sentenced or awaiting trial, are not legally guaranteed meetings with their families and friends. There are times that the unconvicted detainees, who are supposed to be presumed innocent, are not permitted to meet with their families. When the family members are able to meet with the prisoner at all the regulations allow 30 minute duration for one meeting. However, they are usually allowed a maximum of only 5 to 10 minutes. Unconvicted detainees are allowed one visit a day. However, those who have been convicted are allowed only one visit a month, in principle (Enforcement Decree, Article 56).

229. Quite frequently inmates are denied meetings with friends and former colleagues. Especially in the case of political prisoners, since July 1990 the Ministry of justice gave an instruction to prison authorities not to permit political prisoners to meet with anti-government people, meetings with their friends and colleagues have been disallowed quite often.

230. It is virtually impossible for journalists or any others who have special interest in inmates to have access to the inmates. Even defense attorneys, among others, are not allowed to see the cells in which the inmates are held. These provide sufficient opportunity for violation of human rights in the prison and their cover up.

231. Sending and receiving letters can also be restricted by the authorities. Since the Article 70 of the enforcement decree of the Penal Administration Act stipulates that the letters that are not allowed should be destroyed, there is sufficient opportunity for letters addressed to or posted by the inmates to be destroyed without their knowledge.

Permission to Write

232. The Penal Administration Act has no regulation concerning writing by inmates. However, it is common practice to prohibit inmates from having any kind of writing tools/materials. Any writing, including writing of letters requires prior permission from the prison superintendent. In actuality, it is very difficult for inmates to obtain permission to write. According to the survey by the Committee for the Defense of the Human Rights of Prisoners, there have also been cases of inmates not given permission even to write in preparation for his trial. These are very severe restrictions which violate Article 14 Paragraph 2(b) of the Covenant which stipulates the right to be provided with sufficient time and facility to prepare a defense.

Reading of Books

233. Article 33 of the Penal Administration Act states that when a prisoner requests to be allowed to read, this must be permitted as long as there is no particular reason not to. However prisoners, both convicted and unconvicted, are prohibited from obtaining and reading books which are either political in nature or critical of the government. Among the books which are prohibited in prisons are those books which are supposedly "material benefiting an anti-State organizations under the National Security Law article". The Ministry of Justice is known to have listed over 600 books, including those which have been subjected to National Security Law cases, for prohibition of reading in prisons. Furthermore, other reading materials which are deemed anti-government are prohibited by arbitrary decisions of the prison authorities. There has been a case where the person who was imprisoned for reading a book "which benefits the anti-State organizations" was unable to obtain the book in question for preparation of his argument in defense during trial. Daily newspapers are allowed in prisons, but are subject to frequent arbitrary censorship by the prison authorities.

234. There are many cases of inmates protesting the banning of books by the authorities. Because many of the inmates who are detained for violating the National Security Law are students and intellectuals who require great deal of reading and writing, banning of books functions as an especially severe treatment. At times, the protest of inmates and the resulting violent suppression by the prison authorities have led to clashes. Such a case occurred on August 27, 1990 in the Seoul Detention Center. The following is a summary report based on a survey conducted by the Human Rights Committee of the Seoul

Bar Association.

"On that day, political inmates imprisoned in the Seoul Detention Center, Kim Yong-Ki, Kim Joong-Sung and Kim Tae-Jin protested the prison authorities' prohibition of the entry of some social science publications. The protest led to a clash between the protesting inmates and the prison authorities. Some 90 other inmates, after they heard the news, held a sit-down protest strike in their cells and prison offices, demanding the repeal of restriction on books allowed for entry into prison. In response, the prison authorities mobilized some 200 prison guards equipped with tear gas, gas guns, truncheons and shields, and forcibly dissolved and beat the inmates. According to the doctors who accompanied the attorneys at law, at least 35 inmates received heavy injuries in the process. The prison authorities also inflicted further suffering on the already injured inmates through disciplinary punishment including solitary confinement and beatings."

Access to Radios and Televisions

235. Prisoners are allowed access to radios or televisions restrictively.

Separate Treatment of Prisoners by Classification

236. According to the "Cumulative Correction Treatment Regulation" decreed by the Ministry of Justice, inmates are broadly separated into 3 classes: A Class (correctable), B Class (difficult to correct) and C Class (very difficult to correct). They are also classified into 4 graded levels. Treatment is supposed to vary according to the classification. However, the classification regulation stipulates that the inmates who are imprisoned for their political views/actions, religion, or ideological conviction, and who fail to show signs of abandoning their conviction, are to be excluded from the varied treatment according to classification. This excludes them from parole programs which are limited to those in levels 1 and 2. The Article 14(2) of the "Regulation for Parole Examination" stipulates that "the inmates convicted of violating the National Security Law, etc. must be examined for the conversion of their ideological beliefs. And when it is needed, they are to submit written statement on the conversion of their ideological beliefs." The "Regulation on Temporary Release" also excludes political prisoners from consideration by limiting temporary release for those who are either in 1st, 2nd, or 3rd level.

237. The inmates who are imprisoned for violation of the National Security Law are classified as "ideological convicts" without regard to their real ideological beliefs. They are treated disadvantageously and cannot expect easing of such treatment, parole, or temporary release without signing a statement of conversion. Such a system applied against people who are imprisoned under the National Security Law is a severely cruel treatment which violates the freedom of conscience and is a discriminatory treatment on the basis of one's thought, creed and conscience.

238. It is a common practice for people serving long term sentences, including life imprisonment sentences, to be released before the fulfillment of their terms through parole, commutation and other humanitarian actions. In South Korea, such parole, commutation and amnesties are quite common through presidential action, especially on special dates in the state calendar. However, long term inmates who are convicted of violating the National Security Law are excluded from this kind of benefit. Despite the regulation, Article 26 of the enforcement decree under the Penal Administration Act, which stipulates that inmates cannot be kept in single-person cells for more than 2 year periods, most of the long term inmates who have refused to sign a statement of conversion of ideological beliefs have been kept in solitary confinement for decades. Inmates who have refused to submit a statement of conversion are excluded from outside work, and confined to a space smaller than 2 square meters. According to a documentation by the Council of Families for Democratic Movement (Mingahyup), the number of long term inmates being held for non conversion by age and length of imprisonment at Daejun Prison as of October 10, 1991 is as follows:

age	over 69	60 - 69	50 - 59	40 - 49	30 - 39	below 30	total
number	6	21	15	3	1	1	48

years of imprisonment	over 40	30-39	20-29	10-19	below 10	total
number	2	10	23	6	7	48

Work

239. Persons sentenced to imprisonment and certain other inmates should serve in prison

labour. According to Article 39 of the Penal Administration Act, those serving in prison labour are to receive remuneration. However, the amount of the remuneration is very low, and the inmates are not indemnified against the death or injury from the prison labour except for a small consolation payment. Disaster insurance and health insurance are basically nonexistent.

Supervision of Prisons and Remedies for Violation of Inmates' Rights

240. The Penal Administration Act provides various regulations about inspection of prisons by the Minister of Justice or lower officer, and by the public prosecutor and the judge. However, on sight inspection, stipulated in the Article 5 of the Penal Administration Act, is conducted not more than once a year, the minimum number. Furthermore, there is virtually no inspection conducted by the public prosecutor or the judge.

241. The Penal Administration Act provides regulations concerning inmates' petitions to the Minister of Justice or officer of the Ministry of Justice responsible for on-sight inspection. Article 9 of the enforcement decree also allows the prisoner to request an interview with the prison chief. However, on-sight inspection is very rare and interview with the prison chief is rarely permitted. Therefore, there is very little chance for inmates to resolve their complaints through petition to the Minister of Justice, on-sight inspectors, or through interview with the prison chief. Furthermore, many inmates do not know that there are avenues of petition and interview as means to air their complaints.

242. There is no possibility for civilians or organizations independent of the government to participate in the inspection of the prison and other kinds of correctional detention facilities. The Ministry of Justice and the prison authorities also refuse to allow the participation of civilians when cases involving unusual cruelty and severity are reported. The authorities simply make public a report of their own investigations.

243. The Agency for National Security Planning, through the regulation stipulated in the Agency for National Security Planning Act, can conduct investigations on a wide range of politically-sensitive cases, including the cases concerning violation of the National

Security Law. It is very common for the Agency for National Security Planning to hold "suspects" for investigation from 10 to 20 days. Because of the special status of the Agency for National Security Planning in South Korea, the investigations conducted by the Agency are *de facto* not supervised by the Public Prosecutor' Office. Therefore, the suspects detained by the Agency cannot even enjoy the limited rights stipulated in the Penal Administration Act. The Agency for National Security Planning is exempted from inspection and supervision even of the National Assembly and the Board of Audit and Inspection. Because of this, there is utterly no inspection of the Agency though it is clear that it functions as a detention facility.

244. Though the government report states that the inmate awaiting his execution is given "humane treatment" (article 114) comparable to the treatment given to the inmate under trial, this does not correspond to reality. Usually, even before the judgment, if the prosecutor demands a death sentence, from that point on, the accused is handcuffed . From the moment that the death sentence is considered, and even before such judgment is made, the inmate must spend all hours with his hands handcuffed except during bathing. This means the prisoner must eat, go to the bathroom, and sleep while handcuffed. Moreover, the accused is usually not only handcuffed but also bound by rope and leather as he stands in court to receive his judgment. Not only is this kind of treatment inhumane, it also constitutes a violation of his right to an adequate defense, his right to be considered innocent until proven guilty, and his right to a fair trial.

245. A. As can be seen in the above explanation, the inmates in South Korea receive a treatment falling far short of the United Nations Standard Minimum Rules for the Treatment of Prisoners, in clear violation of the Article 10 of the Covenant. Furthermore, there is no institutional facility to protect the rights of inmates, to effectively investigate and inspect the cruel treatment and unlawful activities that are actually conducted in the prisons. The Penal Administration Act and relevant enforcement decrees must be reformed in accordance with the Standard Minimum Rules. Furthermore, just and fair institutions and processes which can prevent and investigate inhuman treatment inflicted on inmates must be established.

B. Overall, despite the declarations found in the law, the prison system in South Korea is not geared towards correction and rehabilitation of the prisoner into the

society. Instead, it seems to remain a retributory system which is geared towards inflicting as great a suffering as possible to the inmates. Furthermore, since the government declared a "War on Crime" in the last days of 1990, the treatment of inmates in prisons have generally become even harsher. At times, the government seems to be intent on arousing the hostility of the people against the convicted people. These actions are in clear violation of the Article 10 Paragraph 3 of the Covenant and require immediate reform.

Problems in Treatment of People in Social Welfare Facilities

246. According to the Social Welfare Business Act (Law No. 2191 of January 1, 1970 as last amended by Law No. 3656 of May 21, 1983), the government, a local government or a juridical person (e.g., a corporation) which obtains approval from the Minister of Health and Social Affairs can establish social welfare institutions (Articles 2, 7 and 22). According to the Minimum Subsistence Guarantee Act (Law No. 3623 of December 31, 1982), the Minister of Health and Social Affairs or other government officials may 'admit' into social welfare institutions, those people who are senile and over 65 years old, who are less than 18 years old, who are pregnant, who can not work due to incurable disease or disability, or who otherwise are incapable of self-care. These people may be given "guidance" and "instructions" in those institutions (Articles 15, 22 and 25). Under this law, many people have been admitted into the social welfare institutions, but treatment of these people is evaluated as below the standards set by the Covenant in Article 10. There are reports that those people in the institutions are mistreated, forced into performing Labour, and sexually harassed. There are even cases of deaths from questionable causes. Though the people in the institutes are allowed to petition the government offices in case of maltreatment, it is questionable whether the internees know that they have this option and whether they are able to exercise this right without interference. Furthermore, this kind of "internment" which limits the freedom of movement is being carried out by administrative offices without involving any judicial organizations. Because the criterion for internment in such places are described somewhat abstractly, and the present system allows a person to be restricted physically because of somebody's arbitrary decision, it can be seen as violating Article 9 of the Covenant. Also, it is quite doubtful that the government office monitors sufficiently the social welfare institutions to protect the internees' rights and welfare.

247. According to the Law for the Welfare of the Persons with Disabilities (Law No.4179 of December 30, 1989), physically and mentally disabled persons must be registered with the authorities (Article 10, Paragraph 1). If the Minister of Health and Social Affairs and other government administrative office deems necessary, then the authorities can 'admit' a disabled person to a social welfare institution (Article 20). Disabled people who are admitted to the institutions can request an investigation and an administrative trial of the decision (Articles 54 and 55). But this opportunity for appeal comes after they are already within the institutions. There are several problems with this policy: (1) Although the admission of disabled persons is a measure that restrains the disabled persons' physical movement, it is carried out by the government administrative offices without involvement of the judiciary. (2) It is doubtful that the admitted disabled persons know about their rights, and even if they do, whether they are allowed to exercise their right without interference. (3) It is quite questionable that the treatment of the adimitted disabled persons corresponds to their human dignity. In some cases, people are admitted without a psychiatric evaluation and even in cases that psychiatric evaluations are conducted, the reliability and the accuracy of the diagnoses are quite moot.

248. The government of South Korea recently announced a plan for enactment of the Mental Health Law. According to this plan, mentally disabled people may be admitted into mental hospitals or other social welfare facilities according to the diagnoses by the government-appointed doctors. In South Korea there are only a few hospitals and specialized doctors that can treat the mentally disabled and in fact, the reality is that people who can not afford the cost of hospitalization are not able to obtain treatment. Since there are not enough number of the hospitals or doctors to accommodate and treat the mentally disabled people, it is unreasonable to make a law which makes institutionalization of the disabled mandatory. Such an unreasonable plan will serve more to separate the disabled from the rest of society than to help them, and there is danger of violating rights of the disabled on a large scale if such a plan is enacted. The forced internment of the disabled is clearly in violation of their human rights and can be abused politically if they are interned by government-appointed doctors.

249. A. The Ministry of Health and Social Affairs oversees various social welfare facilities. Among them are facilities for mothers and children, the elderly, the

physically and mentally disabled, and vagrants. In general, it is known that people who are interned in these facilities do not get adequate food, clothing, housing or medical care. It is reported that among these facilities, violation of human rights is especially severe in facilities for the mentally and physically disabled and vagrants.

B. There is no clear definition for a "vagrant". The Ministry of Health and Social Affairs defines a "vagrant", as a person who does not have a residence or a person who does have a residence, but does not want the protection of family and wanders around, disturbing the public, or as a person who can not function properly due to defects in body or mind and wanders around creating public disturbances (Data from the Inspection of the Administration by the National Assembly in 1991). Unless these vagrants commit a crime, they should not be institutionalized. However, the Ministry of Health and Social Affairs uses their official order "the management covenant of guidance facility" as the basis upon which to forcefully intern vagrants. According to the Ministry of Health and Social Affairs, 12,954 "vagrants" are interned in 38 facilities, as of the end of June, 1991. Among them, 10,178 are physically or mentally disabled.

C. As of September 30, 1990, there were 17,464 mentally disabled persons who are interned in some 70 welfare institutions. Those who are in the regular mental hospitals are excluded from this figure. Among the 17,464 internees, 10,803 are male and 6,661 are female. There is not even one full time psychiatrist in these welfare institutions; only one psychiatrist is on duty part-time. Obviously, diagnoses and treatment for these persons are inadequate.

Forced Labour - Article 8

250. Slavery, in the classical sense of the word, does not exist in South Korea. However, there are grounds to recognize that forced labour as defined in Article 8, Paragraph 3(a) of the Covenant exists in South Korea. Using the definition of "forced or compulsory labour" in the Convention No.105 "Convention Concerning the Abolition of Forced Labour" adopted by the International Labour Organization, "forced labour" is present in South Korea.

251. Article 1 of the Convention Concerning the Abolition of Forced Labour prohibits and

regulates against the use of forced or compulsory labour as a "means of political coercion or education or as a punishment for holding or expressing political views ideologically opposed to the established political, social or economic system"(a) and as a "punishment for having participated in strikes"(d).

Forced Labour Under The National Security Law

252. South Korea has adopted a capitalist system. Opposition to capitalism or support for socialism, communism, or Juche Thought, the leading ideology of North Korea, as well as reading, expressing, or writing about them is punishable as a "crime of benefiting an anti-State organization" under the National Security Law (Detailed explanation found in the section dealing with the National Security Law in Paragraphs 96-119 of this report). Article 7 of the National Security Law stipulates up to 7 years of imprisonment for the above mentioned crime. The sentence of imprisonment is defined as "imprisonment with forced Labour" (Criminal Code Article 67). Therefore, persons being punished under Article 7 of the National Security Law must perform forced Labour as defined in the ILO Convention No.105 and it seems to be inconsistent with Paragraph 3(b) of Article 8 of the Covenant.

Punishment for Participating in Strikes

253. The Labour Disputes Adjustment Act(LDAA; See Paragraphs 134-139 of this report) severely restricts the actions of workers concerning strikes. This Act requires the observance of the following formal procedures before beginning a strike: (1) workers must obtain a majority in a vote for strike(LDAA Article 12(1)); (2) workers must give notice to a responsible administrative authority (Article 16(1)); (3) workers must wait for 10 days as a cooling period (15 days for transport, broadcasting, and other public enterprises) following the date of the official notification (Article 14); (4) workers who are employed by state or local government or important defense industry enterprises are banned from striking (Article 12(2)); (5) an additional 15 days cooling period must be observed in case the or the Labour Relations Commission refers the dispute to the arbitration on the request of the Administrative authority on *ex officio* decision (Articles 30 and 31); (6) beginning a strike becomes impossible in case the award of the arbitration is rendered by the Labour Relations Commission even though the labour union demands a review to the Central Labour Relations Commission or file an administrative litigation to the High Court (Articles 38 and 39); (7) in case the

Ministry of Labour decides to begin an emergency adjustment, where the dispute relates to public interests or it is of large scale or of specific character to bring about a damage to the national economy or daily life of the public, workers must immediately suspend any act of strike and must wait another 20 days to commence a strike again (Articles 40 and 41); (8) strike is prohibited when the Central Labour Relations Commission renders the award of the arbitration as explained above; and (9) support from workers or people not employed by the company where the strike is taking place is banned by the prohibition of third party intervention provision of the Labour Disputes Adjustment Act.

254. Workers employed by the state or local government or important defence industries are punishable up to 5 years of imprisonment when they participate in strikes (Article 45-2). Workers who have not suspended the act of strike or commenced a strike again within the said 20 days period are punishable up to 2 years of imprisonment(Articles 46 and 46-2). A failure to take a vote of workers before beginning a strike or a failure to observe the cooling period is liable to imprisonment of up to 1 year (article 27). A failure to give notice of the beginning of a strike to the Administrtive Authority is liable to imprisonment of up to 6 months (Article 48).

255. Investigative agencies and courts customarily provide broader interpretation of various laws concerning workers' strikes. It is common for them to find labour disputes as causing interference with the business of the employer or the third party. In doing so, the judicial agencies have charged the crime of interfering with the business(Criminal Code 314) against workers who have participated in strikes because this crime of interference brings with it a heavier penalty of imprisonment of up to 5 years against workers. Furthermore, there are many cases where workers have been punished for assemblies held by them during strikes without giving prior notice to the authorities for the violation of Article 21 of Act Concerning Assembly and Demonstration which stipulates up to 6 months of imprisonment.

256. A collective refusal to work extended hours, even though it is guaranteed by the Labour Standard Act, is also found to be a crime of interfering with the business of the employer under the said Criminal Code. This is the established rule by the decisions of the Supreme Court (October 22, 1991, 91-Do-600).

257. The laws and execution of the laws mentioned above are arguably inconsistent with the ILO Convention No.105 which prohibits forced or compulsory labour as a "punishment for having participated in strikes." This may be, therefore, seen as violation of Article 8 (3)(a) which prohibits forced labour.

Forced Labour of Sailors

258. Sailors of various kinds of ships (fishing and transport) are exposed to life threatening situations and death. The problem in this issue is the Stowaway Control Act(Law No.831 of December 13, 1961, as last amended by Law No.4147 of December 27, 1980). This law provides the punishment against those who jump ship or fail to return to ship by the time designated by the captain of the ship in a territory outside the Republic of Korea (item ii of Article 2 and Article 3). However, the Supreme Court, in deciding on the act of jumping ship or failure to return to ship, does not take the causes or purposes of the act into consideration. Because of the strict interpretation, many people have been found guilty of jumping ship, as in the following example. A sailor could not obtain permission from the captain of the ship to leave the ship despite his complaints of illness or extremely hazardous work conditions on the ship. Even though he had unilaterally negated his employment contract and had gone to a South Korean embassy or such diplomatic mission to arrange for early return home, the man was liable to be punished for leaving ship without permission (Supreme Court decision on February 14, 1984, 83-Do-3016). Such an attitude of the state institution is a neglect of the responsibility of the state to provide assistance and remedy for its citizens in difficulty. Because of the lack of interpretation of the law in good faith, sailors, once the ship leaves the national waters of South Korea, are unable to leave ship without permission from the captain despite unbearably difficult working conditions. It is also impossible to seek assistance of the South Korean government offices based overseas. The continuation of labour under such conditions is, in fact, a forced or compulsory labour.

Right to Liberty of Movement and Residence - Articles 12 and 14(2)

Prohibition of Departure from South Korea

259. The Immigration Law (Law No. 3,694 of December 31, 1983) stipulates that the Minister of Justice may prohibit a person from leaving South Korea if the Minister deems

that the departure of the person from South Korea might damage interests of South Korea or such departure would hinder the investigation of a crime (Article 4, Paragraph 1). According to the Enforcement Decree of the same law, if the head of a governmental body, in relation to his duties, finds a person to be prohibited from leaving the country, he may request the Minister of Justice to make such prohibition. When the Minister of Justice makes the decision, the Minister records the person's name on the list of prohibition, reports it to Immigration Offices, and notifies the head of the governmental body of the decision if it has been requested by him.

260. Since reasons of prohibition, as prescribed by the law are very abstract, they open the way for government authorities to arbitrarily prohibit some particular persons from leaving the country. Moreover, a person who is not convicted or not even accused can be prohibited from leaving the country only because investigative authorities need him or her for investigation. This appears to violate the principle of presumption of innocence guaranteed in Article 14, Paragraph 2 of the Covenant. The above law does not require the Minister of Justice to make notification of the prohibition decision to the person who is prohibited from leaving. Thus, a person who is on the list of prohibition, sometimes becomes aware that he or she is prohibited from leaving while he is in the departure procedure at the airport and has to change his or her planned schedule. For example, Mr. Kim Lok-Ho, a physician who did considerable research on industry-related health problems, tried to leave for the U.S.A. for graduate work on August 20, 1991. However, he was prohibited from leaving the country one day before his planned departure. The reason for prohibition was known as his alleged involvement in the Park Ki-Pyung case. Mr. Park had been arrested under the National Security Law in March, 1991, and subsequently indicted after investigations by the National Security Planning Agency and the Public Prosecution. The government did not conduct any investigation concerning Mr. Kim for five months but prohibited his departure from the country for investigation purposes just before his planned departure.

261. As seen above, the system of prohibiting departure may result in the government authorities placing unnecessary restrictions on the departure of people from South Korea in an arbitrary manner.

Forced Demolition of Residence

262. South Korean people suffer serious lack of housing. As of November, 1990, there were only 7,374,022 houses for 11,357,160 households throughout the country. Moreover, the number of households who own houses is only 5,743,728 (Office of Statistics, Follow-up Report on Census of the Population and Housing in 1990). According to the Korea Housing Bank, the price of housing in South Korea, on the average, increased at the rate of 63.6 percent for five years since 1986. The government promotes a policy to build large apartment complexes or create new cities in the outskirts of Seoul to increase the supply of housing. The central government, local governments, or public or private corporations that develop land for housing or construct houses in those areas are given powers to expropriate land required for their business. They often demolish existing houses in the areas inhabited by the urban poor, and instead construct a quality apartment complex where persons in the middle or high class will reside. In such event those who operate the business (i.e., the governments and corporations) usually get enormous profits, while the people who have lived in the demolished houses have to leave there for new residences. The compensation paid to the owners of the demolished houses is, in most cases, not to their satisfaction. Especially people who have rented the houses suffer more seriously because they are almost not compensated at all. These poverty-stricken people can hardly afford to get new housing under the circumstances where the supply of housing falls well short of the demand. Sometimes, they believe that they are deprived of residences in order for the operators of the housing business to derive huge profits. Thus, they set forward to resist the demolition of the houses, but have to succumb to the governmental force which ultimately demolishes the houses. In most cases, thugs conduct forced demolition by using organized violence under the aegis of the police. Many people are injured by the thugs while driven out of their residences. As we can see, the practice of forced demolition of residences connected with the housing policy of the government, appears to be a violation of the freedom to choose residence.

Right to Privacy - Article 17

Invasions of Privacy by State Agencies

263. The large scale on which the police and civil and military intelligence agencies in South Korea are believed to conduct surveillance activities can be seen as an interference of privacy. Such surveillance activities are in violation of Article 17,

Paragraph 1 of the Covenant.

264. Private Yoon Seuk-Yang was forced to work as an informer for the Military Security Command while serving his national military service duty. On October 4, 1990, Private Yoon exposed to the public a systematic and giant scale surveillance of civilians by the Defense Security Command. According to Private Yoon's testimony, the Military Security Command kept computerized surveillance on some 120 politicians, including leaders of political parties, some 180 religious leaders, some 45 leading academicians, journalists, lawyers, artists, labour movement leaders, peasant movement leaders, university students, dissident activists, and others as well. The Military Security Command had been maintaining detailed periodic surveillance of 1,303 civilians. Private Yoon was able to produce index cards of 1,303 people, 4 files of personal information documentation, 30 computer diskettes containing detailed record of activities of these people, and 387 index cards on students of Seoul National University that kept a record of their activities. According to the laws of the land, the Military Security Command can only undertake and deal with intelligence related to military matters. According to the materials brought out by Private Yoon, the Military Security Command had been maintaining the following kinds of information on the individual records: name, date of birth, domicile, position, academic records, work experience, criminal records, participation in political parties and social organizations, personal relationships, influential personal relationships, major activities since 1945, articles printed in newspapers and other media, lecture contents, speeches made at various meetings, housing structure, entrance and emergency exits of the housing, height of house fence, existence of alarm system, family information, types of vehicle owned, vehicle registration number, means of daily transportation, time of leaving and arrival at home, expected path of escape, expected places for hiding, priority in surveillance, and so on. It is understood that the Military Security Command utilized telephone bugging, opening of mail, illegal entrance into homes, illegal seizure and search, tailing, and other illegal methods. However, the Military Security Command refused to announce the details of or legal grounds for the surveillance.

265. Following the expose by Private Yoon, the government dismissed the Minister of Defense and the Commander of the MIlitary Security Command, and declared that the military intelligence agency will terminate all surveillance activities targeting

civilians. However, the government's declaration was quickly proven to be a lie. It was discovered that the Chief Officer of Seoul Branch of the Military Intelligence Command (new name for the Military Security Command) had, on March 16, 1991, sent a special letter to 11 regional branches of the Command requesting assistance in "urgent internal investigation." This letter listed 12 student movement activists and requested documentation of their family relations, personal contacts and orientation, assessments by neighbours, record of relationship with social movement organizations, and daily activities and speeches.

266. According to a November 3, 1990 article of a major daily newspaper, Dong-A Ilbo, the police had, under a secret instruction from the Ministry of Internal Affairs dated December 20, 1982, employed officers of students unions, university staff, teachers of various campuses and religious figures as informers for a surveillance of students involved in anti-government activities. The National Police Headquarters document revealed that these informers were maintained with a payment of 70,000 to 100,000 Won (100 to 140 dollars approximately) per month.

267. On March 17, 1991, an agent of the National Security Planning Agency who was monitoring a rally of workers in one of the universities in Seoul was captured by workers.

Censorship of Mail

268. According to the Provisional Mail Control Act (Law No. 11 of December 1, 1948), the President can order the appropriate state employee to examine mail when there is conspicuous danger that the mail can cause damage to military or public security. Postal Service Research Institute was established under the Ministry of Communication on the basis of this law and examines mail in all post offices throughout the country. It is known that the Postal Service Research Institute receives lists of people for mail examination from the Agency for National Security Planning. This law was enacted prior to the Korean War (1950-1953) in order to maintain surveillance on communist activities. Now, forty years later, the communist threat in South Korea can be said to have all but disappeared. However, the law continues to allow the government to examine mail without any restriction without the knowledge of the correspondents. This is a violation of Article 17, Paragraph 1 of the Covenant which prohibits arbitrary interference with

correspondence.

Wiretapping

269. The Telecommunication Business Law (Law No.4394 of August 10,1991 as last amended by Law No. 4441 of December 14, 1991) prohibits wiretapping. However, it is widely believed that the police and various intelligence and security agencies in South Korea conduct systematic bugging and wiretapping of ordinary conversations and telephones whenever it is deemed necessary. Such practices are violation of Article 17, Paragraph 1 of the Covenant. The following are some examples of wiretapping :

A. On September 21, 1990, a university student Jeun In-Hyun was arrested by the Agency for National Security Planning for violating the National Security Act. Only two days prior to his capture, September 19, a bugging device with a transmission capacity of 600 meters was found installed in his room.

B. On June 1, 1991, a mini-cassette wiretapping recorder was discovered in the telephone board box in Suwon Labour Education Research, in Suwon, Kyoung-ki Province.

C. On March 4, 1992, it was discovered by reporters that the police was wiretapping the phone calls made through the Dong-Ulsan Telephone Office in Ulsan, South Kyoungsang Province. In this region are offices of many corporation in the Hyundai Group, which was closely connected with a newly established political party that was preparing for the March 24 elections. The party insisted that the above wiretapping was aimed at them.

D. On April 21, 1992, Kim Hee-Sun's phone line was discovered to be monitored by a wiretapping device in the telephone board box in front of Kim's house. Kim was the Chairman of an organization for anti-government movement and wanted by the police for violation of the National Security Law. The next day, the phone line of Kim Eung-Kwan, the Secretary General of the same organization was discovered to be tapped.

270. The Telecommunications Privacy Act, which is mentioned in Paragraph 228 of the government report as soon to be legislated, has yet to be considered by the National Assembly though it has been three years since it was first proposed. It is anticipated

that the proposal will be considered to be withdrawn when the term of office of the 13th National Assembly expires in May 1992. And furthermore, even this proposed law stipulates that a security agency may wiretap with the President's approval: thus, it seems intended to make wiretapping lawful rather than to protect the privacy of the people.

Administrative Telecommunications Network

271. The administrative telecommunications network operated by the government gathers 74 items of personal information of all the people. This is set up at the police offices and is used as investigative material without any kind of restrictions. The information that is found in this network is provided or divulged to a variety of groups: the ruling party politicians, business enterprises, mass media personnel, medical insurance associations, financial institutions and so on. At the same time, the Personal Information Protection Act, mentioned in Paragraph 227 of the government report as soon to be legislated, has yet to be even submitted to the National Assembly. And there is no mechanism to block improper use of the information gathered by private enterprises or individuals in the proposed act.

Public Announcements of Alleged Criminal Acts

272. The Criminal Code prohibits the publication of alleged criminal acts by investigative officers before the suspects are actually indicted for the crimes (Article 126). The Public Prosecutors' Office, the police, and the Agency for National Security Planning habitually violate this law, and in the case that an anti-government person is the suspect, they try to make him or her lose public support through spreading irrelevant or even fictitious information. Moreover, there is no mechanism through which the public can bring a charge against this kind of illegal activity, and those who can, that, is the investigative officials, do not. An example of the above mentioned behavior follows: On April 3, 1991, when the Agency for National Security Planning made public the results of investigation of Park Ki-Pyung for violating the National Security Law, it publicized information which had no relation to the allegation. The Agency publicized that he was separated from his wife and was living with another woman, and that he lived a life of luxury, such as his meals were made of vegetables and seafood purchased from expensive department stores. However, none of these claims were substantiated by concrete evidence and were not included in the final indictment.

Discrimination Against Women - Articles 3, 23(4) and 24(3)

Laws Which Discriminate Against Women

273. As it appears in the government report, the provisions of the Civil Code concerning family matters (hereafter referred to as "Family Law") were amended in January 1990 instituting various improvements in the status of women, and the amendment went into effect in January, 1991. However, there are still laws which discriminate against them.

274. The Family Law maintains the "family head (Confucian) system" intact. The "family head system" makes a man the legal head of a family. It endows on him legal deciding powers concerning various issues in a family.

275. The Family Law recognizes, in time of divorce, the right of a woman to claim a share of the family property. However, the law fails to stipulate common ownership of the family property. Therefore, once a divorce case is started, the woman has the burden to actively substantiate, within the boundaries of strict rules of evidence and corroboration, the economic contribution she has made to the family property in order to get a share of it. Since in most cases the contributions that a woman makes to the family property are not quantifiable, it becomes difficult for her to prove, within the law's strict rules of evidence, the fair amount that she is entitled to.

276. When a woman inherits property due to the death of her spouse, she must pay an inheritance tax at the progressive rate of 10 to 55 percent. Furthermore, she is taxable at the progressive rate of 15 to 60 percent on the share of the property she obtains following a divorce. If we consider that the inheritance or acquisition of property following a divorce is not "gifts" of property at no cost, but distribution of the property she has contributed to form through the marriage, such a high rate of taxation is an unfair and discriminatory restriction of the property rights of women.

277. According to the Nationality Act in South Korea (Law No. 16 of December 20, 1948 as last amended by Law No. 2906 of December 22, 1976), in determining the citizenship of the newborn, it is the citizenship of the father which takes precedence. This is a clear discrimination against women. Furthermore, this law is in potential conflict with Article 24, Paragraph 3 of the Covenant.

Employment Discrimination Against Women

278. The Gender-Equal Opportunity Employment Act (Law No. 3989 of December 4, 1987 as last amended by Law No. 4126 of April 1, 1989), effective April 1, 1988, prohibits the discrimination in employment promotion, allocation of position, wage, and dismissal because of gender. However, four years following the effective date of the law, discrimination against women in employment remains almost intact.

279. The government funded "National Citizens Bank" employs women and men differently, even though they may have the same qualifications. Women are employed as "woman bank employee," and men are called "bank employee." There is a gross discrimination against "women bank employees" within the workplace, including unfairly different wage levels. A "woman bank employee" has to work 15 years before she can become a "bank employee." Recently, women bank employees have brought a litigation against the bank to bring about reform in this discriminatory system. In response, the bank announced that it will create two new positions called "general position," and "comprehensive position," and abolish the old ones. In our view, this change simply renames the positions without making any real changes to the system of discrimination in wage and treatment. According to a national study by the "Family Legal Counseling Institute," firms which recruit only men employees make up 29.6 percent of the total firms, and firms which differentiate positions according to gender compose 53.5 percent of the total.

280. Discrimination continues to be the general situation partly because the law stipulates weak penalties against its violation, and because the government does not even exert much pressure to penalize the violators of the current law. Indeed, Article 23 Paragraph 2 of the law states that an employer who has discriminated against women in the recruitment, employment, or promotion shall be fined up to 2,500,000 Won (US$ 3,400 approximately). One single case of penalty of fine took place when groups of women university students filed a criminal case for discrimination, against four well known companies.

Childcare Facilities Are Virtually Non-Existent

281. The single greatest factor which disadvantages women seeking employment is the lack of childcare facilities. According to a study by the Korea Women's Development Board, which is sponsored by the government, only 24.4 percent of children of employed mothers

were either using childcare facilities or some other means of care (such as baby-sitters), while the remaining 75.6 percent are left without care while their mothers are at work.

282. According the 1990 Childcare Facility Program of the government, families with both working parents number some 1.51 million households, while the children that are taken care of by national and public childcare facilities number only about 10,000. The government plans to create childcare facilities with a total capacity of 80,000 by the year 1992. Even though the law prohibits the dismissal of women for the reasons of marriage, pregnancy and delivery of children, most women are in reality forced to terminate their employment because of the lack of childcare facilities and other support systems.

283. The Childcare Act (Law No. 4328 of January 14, 1991), effective January 14, 1991, calls for extremely strict conditions to operate childcare facilities. People operating facilities which do not conform to the unrealistically strict rules are liable to be sentenced up to one year in prison. This law also enables the government to support civilian-operated childcare facilities which are large in size and in conformity with the law. The existing civilian-operated childcare facilities in poorer areas are not able to receive government support and are also likely to be closed down forcibly because they lack the facility requirements stipulated by the law. The lack of childcare facilities stems mainly from the very low national expenditure allocated for social welfare, which makes up only 1.3 percent of the total national budget, and also the very low expenditure allocated specifically for childcare facilities, which make up only 0.1 percent of the total national budget.

Increase in Sexual Violence

284. Recently cases of sexual violence and sexual crimes have increased dramatically and has become one of the most serious social issues. The increase in sexual violence and sexual crimes can be attributed two factors: first, the government has been in the 1980's very lax in its attitude towards the "entertainment" industry. It has boomed, especially since the holding of the Summer Olympic Games in 1988, major daily newspapers companies competitively publish sports newspapers which are filled with obscene literature.

Freedom of Association - Article 22

285. The South Korean government has made reservation on the applicability of this article to South Korea. We are not entitled to indicate how seriously the freedom of association is violated in South Korea. We set forth herein only two comments on the government report.

First, the National Security Law, which prohibits the formation of "anti-State organization" and "enemy-benefiting organization," is in reality used to restrict the formation of political associations which are critical of the government and organizations for labour movement.

Second, the labour-related laws prohibit formation of new trade unions or federations which may have the same target membership as existing trade unions or federations. The laws severely interfere with the right to form and join trade unions.