HUMAN RIGHTS IN SOUTH KOREA

■

COUNTER REPORT
TO THE HUMAN RIGHTS COMMITTEE
ON THE INITIAL REPORT
SUBMITTED BY THE REPUBLIC OF KOREA
UNDER ARTICLE 40 OF
THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

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MAY, 1992

LAWYERS FOR
A DEMOCRATIC SOCIETY
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NATIONAL COUNCIL OF
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PREFACE

We, the Lawyers for a Democratic Society and Human Rights Committee of the National Council of Churches in Korea, respectfully submit this report to the Human Rights Committee(the "Committee") and its members. We hope to provide information that will help the examination, by the Committee, of the initial report submitted by the government of the Republic of Korea(CCPR/C/68/Add.1) under Article 40 of the International Covenant on Civil and Political Rights (the "Covenant").

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

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

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

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PART I

General Critique on the Government Report

1. The Republic of Korea ("South Korea") has long been noted in the international community as a state which does not respect human rights. The recent history of South Korea since the end of World War II is marked by illegal arrests and detentions, tortures, imprisonments through unfair trial, unexplained disappearances, and deaths with unknown causes. The Constitution, which has been amended 9 times since its first promulgation in 1948, has always guaranteed human rights. However, the provisions in the Constitution and other laws have not been able to be actualized. Both the government and the courts have construed such provisions in such a way as to justify the numerous infringements of human rights. Presently, Koreans do not have effective means to fight back against this kind of infringements on their rights.

2. For a long time, people of South Korea have endeavored to secure human rights and to effect democracy. The United Nations; other international organizations; and citizens, governments, and non-governmental organizations of various countries have supported and extended encouragements to the Koreans in their efforts.

3. The South Korean government has maintained that democracy has been realized and that human rights violations do not occur any more. In light of this, we welcome the South Korean government's ratification of the International Covenant on Civil and Political Rights(the "Covenant") and the Optional Protocol to the International Covenant on Civil and Political Rights. We regard highly the government's submission of its initial report to the Human Rights Committee(the "Committee"), abiding by Article 40 of the Covenant. This shows, we believe, the government's willingness to inform the international community about the human rights situation in Korea and its willingness to accept international discussion and criticism. Furthermore, we regard this kind of action by the government as indicative of a genuine effort to improve the human rights situation, in accordance with the internationally accepted human rights norms, instead of holding fast only to its own laws, court decisions, and policies.

4. We sincerely hope that the examination of South Korea's initial report will bring about a constructive dialogue between the Committee and the South Korean government on

the human rights situations in South Korea and that the improvement of the human rights situation in South Korea will contribute to the mutual understanding and peaceful and friendly relationships among all the countries.

5. In order to satisfy the reporting obligations to the Committee as set out in the Covenant, the government report should enable the Committee and state parties "to obtain a complete picture of the situation as regards the implementation of the rights referred to in the Covenant." With this criterion in mind, we consider the initial report by the South Korean government far from adequate.

6. The Committee has given reporting guidelines in its General Comments 2[13] Paragraph 3(CCPR/C/21/Rev.1):

> "The Committee considers that the reporting obligation embraces not only the relevant laws and other norms relating to the obligations under the Covenant but also the practices and decisions of courts and other organs of the State party as well as further relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant, the progress achieved and factors and difficulties in implementing the obligations under the Covenant."

7. Though the government report explains some provisions of the laws and other norms, it does not represent a fully accurate accounting of the relevant laws, decisions of the courts, or practices of other organs of the government. No examples of facts which show the degree of actual implementation and enjoyment of the rights are cited in this self-reporting document. It keeps silent on the factors and difficulties in implementing the obligations under the Covenant. The government report fails to explain significant violations of the human rights which have occurred and still occur. In conclusion, because the government report leaves out the occurrences of infringements of the human rights recognized in the Covenant it is written in a way that can easily lead to a false understanding of the real situation in South Korea.

8. The government report falls short of achieving the purpose of the reporting obligation of the State party as set in the Covenant. Therefore, we, who have been

working for the improvement of human rights situation in South Korea, have decided to submit an independent report to the Committee to supplement the shortcomings of the government report, hoping it will help the Committee to realize the originally intended objectives of the examination meeting of the government report.

Factors and Difficulties in the Implementation of the Covenant

9. The most important factor and difficulty in the implementation of the Covenant in South Korea is the division of the country. Since the liberation from colonial domination by Japanese imperialism on August 15, 1948, Korea has been divided. Republic of Korea ("South Korea") was established in the south and the Democratic People's Republic of Korea("North Korea") in the north, after a three year rule by the military governments of the United States of America in the south and the Union of Soviet Socialist Republics in the north, respectively. Each government has asserted itself as the only legitimate government of the whole Korean peninsula. Koreans on both sides have been brought to regard the government on the other side of the peninsula as an enemy. In the case of South Korea, the bitter experience of the Korean War (1950-1953) has left a legacy of fear, distrust and hostility in the minds of the people against communism and the North. Anti-communist and anti-North Korea ideology has been used to justify a series of military coups d'etat and authoritarian regimes. Under the name of the "national security", oppressive laws which violate human rights have been enacted and any speech or activity critical of the government has been punished for being pro North Korea.

10. The relationship between South and North Korea has recently shown a marked improvement following the trend of changes in the international arena. The government of South Korea has declared on several occasions that it would no longer be hostile to North Korea for they are partners in a mutual effort for peaceful unification. In September 1991, South and North Korea were admitted to the membership of the United Nations. On February 19, 1992, the very first official agreement between the South and the North Korean governments was achieved. The "Agreement on Reconciliation, Nonagression and Exchanges and Cooperation between the South and the North" ("South-North Agreement") was signed by the prime ministers and became effective through the ratification by the presidents of South and North Korean governments. On March 20,

1992, both governments jointly registered the South-North Agreement with the secretariat of the United Nations under Article 102 of the Charter of the United Nations. According to this South-North Agreement, South and North Korea pledge to exert joint efforts to achieve peaceful unification, to respect each other's political and social system (Article 1), to not slander and vilify each other (Article 3), and to not make armed aggression along the Military Demarcation Line specified in the Military Armistice Agreement of July 27, 1953, an agreement that was signed after the Korean War (Articles 9 and 11). The South-North Agreement qualifies as a "treaty" under Article 2 and as an "international agreement" under Article 3 of the Vienna Convention on the Law of Treaties. Therefore, it falls under the category of "international treaty" in accordance with Article 6, Paragraph 1 of the Constitution and thus has the same legal effect as that of the domestic laws of South Korea.

11. According to Article 3 of the Constitution of South Korea that states that "the territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands," the northern part of Korea which is under the jurisdiction of North Korea is legally the territory of South Korea. Upon that basis, the National Security Law (Law No. 3318 of December 31, 1980 as last amended by Law No. 4373 of May 31, 1991) stipulates that North Korea is not an independent state but an "anti-State organization illegally organized for the purpose of assuming a title of the government or to disrupt the State." Then under the banner of punishing activities "benefiting an anti-State organization" the National Security Law restricts the freedom and rights of the people. It is questionable whether the laws of South Korea which prescribe North Korea, co-member state of the United Nations, as an "anti-State organization", are consistent with the spirit of the Charter of the United Nations. Such laws appear to be inconsistent with the South-North Agreement. We believe that these laws must be amended. However, South Korean government and courts continue to maintain this antiquated attitude toward North Korea.

12. South Korea has achieved a rapid economic growth coupled with industrialization since 1960's. The transition from an agrarian society to an industrialized one cannot but rely on the cheap wages and the high productivity of labourers. In the process of industrialization, the masses of people who migrated out of rural areas became the urban poor, forming a large industrial reserve force. These people have been compelled

to sacrifice themselves for the sake of national economic development. The trade union rights and the right to strike have been held in check by harsh labour laws and other laws. To say that people's ability to live as human beings has been greatly restricted by constrictive laws and police power would be no exaggeration. The government has denounced labour movements as communist activities or as acts sympathetic to North Korea. The government's dependence on police powers in suppressing the exercise of rights by labourers and low income urban people is one of the important causes of human rights violations in South Korea.

13. Another factor or difficulty in implementing the Covenant is the weakness of the normative power of the Constitution. In theory, the Constitution is the supreme law of the state and sets the highest standard for the merit and validity of government measures and laws. However, since its first proclamation in 1948, the Constitution has been amended 9 times. All of these amendments were centered on the questions of the method of electing the President, the lengths of the terms, and the structure of state power. All the Constitutional amendments, except for those of 1960 and the present Constitution in 1987, were aimed at extending the term of office of the incumbent president or at providing *ex post facto* justifications of the military coups d'etat (1961 and 1980). Because of this history, the Constitution has come to be regarded as something that can be changed for the maintenance of power of the president or ruling party. It has been difficult for the government, the courts, and the people to recognize the Constitution as the supreme law that guarantees human rights and that can deny the legality of laws that infringe on the human rights that are guaranteed in it.

14. Three non-elected legislatures have played key roles in forming the present legal system. They are the military committee named the "Supreme Council for National Reconstruction" instituted in May 1961 by General Park Chung-Hee following his military coup d'etat, the "Emergency State Council" instituted in 1971 after the National Assembly was dissolved to extend President Park's term of office, and the military committee named the "National Security Legislative Council" organized by General Chun Doo-Hwan following his seizure of power through the coup d'etat in May 1980. Each time, the "legislature", composed of members nominated by the leaders of coup d'etat or the current president, enacted many laws that occupy a central place in the present system. Among these "laws", many concern the structure of the state power and have been

criticised as tools of infringement on human rights. Accordingly, the view that laws are enacted at the whim of the government for its own purposes has become widespread, and this is one of the greatest obstacles in establishing the rule of law.

15. Meanwhile, the National Assembly, even though instituted through a general election, has been criticised for not being independent from the President and the administration. The ruling parties have been accustomed to passing laws without legal procedures such as debates and voting when the bills find strong opposition in public opinion and/or in the opposition parties. These laws are then quickly promulgated by the President and become effective. For this reason, the parliament is criticised for passing the bills suggested by the administration using any available means instead of revising or supplementing the bills that threaten the people's rights.

16. Many laws that seriously effect human rights arguably violate the principle of legality [the principle of *nullum crimen nulla poena sine lege*] for their very vague and abstract provisions. As will be shown below, provisions of the National Security Law(See Paragraphs 96-119) and the third-party intervention prohibition provision(See Paragraphs 134-139) are so vague and far-reaching that is difficult for ordinary people to know what kinds of activities are prohibited and what kinds of activities are permitted. There are even laws that use the phrase "through any other means" to describe the punishable act. Meanwhile the courts and the Constitution Court do not seem to be trying to limit the abuse of these provisions. Due to these ambiguous laws, the criminal laws of South Korea are subject to the criticism that they have a double standard. Instead of addressing specific activities, the laws are applied and enforced differently depending on who you are.

17. Abnormal investigation organizations and secret police which have been created in the name of keeping "national security" have enormous influence and continue to violate human rights. The most representative is the Agency for National Security Planning (ANSP), and others like the Security Division of the National Police Headquarters and Military Security Command (Kimusa) are included in this category. The commonality of these organization is that they exist in order to investigate and punish the people who help communism or North Korea. They do not limit themselves to investigating the people who violate the National Security Law, but they also monitor the society as a whole, at

times illegally arresting and torturing people. Needless to say, anti-government intellectuals and activists are not free from their monitoring and neither are the assemblymen of the opposition party or even the politicians of the ruling party. No authority can regulate these organizations and their behavior. The activities of the Agency for National Security Planning are not limited to their investigative activities: it is reported that they also directly or indirectly exert enormous influence in politics and carry out secret operations to support the ruling party canidates in elections. However, no one except the President, can reveal nor monitor the Agency because it is protected by the Agency for National Security Planning Act: rather, the Agency has the authority to control prosecuting attorneys and other related agencies in matters regarding the violation of the National Security Law. For this reason, the Agency is not open to regulation or control by the people or the National Assembly. In fact it looms over the people as something like a fearful object.

Relationship Between the Covenant and the Domestic Laws

18. As mentioned in Paragraphs 5-6, 17, and 19 of the government report, the Covenant has same effect as domestic law. Also, it states that the Covenant can be directly applied by the government and the court. However, there is no unified view on the interpretation of the passage "the treaties have the same effect as the domestic laws" (The Constitution, Article 6(1)). In other words, it is not quite clear whether "the domestic laws" referred to in the Constitution include the Constitution or simply mean other laws enacted by the National Assembly under the Constitution. This is quite important because it is related to the possible problem that the effect of the Covenant may be limited or denied by laws which are enacted thereafter.

19. The content and effect of the Covenant is not known well, not just among the people, but even to the government and the court. Especially the courts do not show any indication that it is trying to apply the Covenant to limit the effect of domestic laws in the cases involving human rights violations. As we can see later, in the cases involving the violation of the National Security Law, prohibition of third party intervention laws and the election laws, the courts have not ruled on the issues of the application of the Covenant in spite of the defendants' assertions. It is regrettable for us to point out that there has been no sign of improvement in the human rights

situation since the Covenant's coming into effect for South Korea in July, 1990.

20. In conclusion, it can be said that the government and courts are not sincere in their effort to accept the Covenant as part of domestic laws and to apply it as such.

PART II

Remedies for Violation of Rights - Article 2

21. As noted in Paragraphs 45-50 of the government report, South Korean laws provide various means of remedy for persons whose rights have been violated either by government agencies or by other persons. The most important of these are (i) remedy through investigation and indictment of the crime; (ii) remedy through trial by court; and (iii) remedy through examination of constitutionality by the Constitution Court and through Constitution Petition Procedures. These methods of remedy have not functioned effectively due to various shortcomings within the institutions themselves and the lack of impartiality of the public officials dealing with these matters.

Remedies through Investigation and Indictment

22. The government agencies which, by law, have powers of investigation are the Public Prosecution Office, the police, and the special agencies, such as the Agency for National Security Planning. Most of the crimes are investigated by the police, while the Agency for National Security Planning investigates a portion of the cases involving the violation of the National Security Law and certain other crimes. The Public Prosecutors' Office has the power to supervise the investigations of the police, of the Agency for National Security Planning, and of all other investigative agencies. These investigative agencies, once investigation is completed, forward all the cases (except for minor petty crimes) to the Public Prosecution Office. Once the cases are turned over to the Public Prosecution Office, that office conducts further investigation if deemed necessary and then decides whether to prosecute the cases. At times, the Public Prosecution Office undertakes investigation from the onset of cases it deems appropriate, rather than leaving it to other investigative agencies.

23. Criminal trial procedure can get underway only when there is an indictment. The Public Prosecutors' Office basically has a monopoly over the power to indict (except for minor petty crimes). Furthermore, the Public Prosecutors' Office also has the power to forego indictment even if suspicion of crime seems justified.

24. In such a system as described above, in cases involving criminal accusations by a person against another who has supposedly violated the rights of the former, remedies

for violation of rights can only be undertaken effectively when the prosecution and other investigative agencies conduct a thorough and sincere investigation and decide on the issue of indictment with impartiality. However, the Public Prosecution Office, the police, and the National Security Planning Agency are all government agencies which are supervised and directed by relevant ministers of the government and finally by the President. Therefore, it is quite possible for investigations and indictments of crimes to be conducted insincerely or unfairly due to political influence. For justice to be carried out, there needs to be democratic control mechanisms over the investigative agencies and the powers of indictment.

25. The petition for court review of the prosecutor's decision is one control mechanism provided by the laws. In the case that a person asserts that he or she was illegally arrested by an officer of an investigative agency or that he or she suffered torture by such an officer and consequently brings a criminal charge against the perpetrators, he or she can apply for a review by a high court if the Public Prosecution Office decides not to prosecute. If the high court accepts the petition as valid, then the case is put on trial in a lower district court. An attorney at law appointed by the court is supposed to act as the prosecutor for the proceedings of the trial, and a public hearing is conducted in order for there to be a decision. Until early 1970s, petition for court review of the prosecutor's decision not to prosecute was possible for all cases of crime. However, in January 1973, the State Council, which acted as the legislative body following the dissolution of the National Assembly (See Paragraph 14), amended the Code of Criminal Procedures (Law No.341 of September 23, 1954). As the result of the amendment, the scope for petition for court review was reduced to very limited ranges of crimes, including illegal capture or cruel treatment by an officer of an investigative agency. The amended law is still in force at present.

26. Another means of response to the decision of the Public Prosecutors' Office not to prosecute is the Constitution Petition Procedures. The Constitution Court, established under the new Constitution which became effective in February 1988, allows the persons who filed the criminal charges to appeal the prosecutor's decision not to prosecute the case. If the Constitution Court recognizes that the decision of the Public Prosecution Office is unjust, then it can nullify the decision and order a new decision. There is a continuing theoretical debate over whether, in such cases, the Public Prosecutors'

Office has a duty to prosecute the case. However, in reality, the prosecutor usually decides not to prosecute the case, following some additional perfunctory investigation. The Constition Court, since it became active in September 1988 until December 1991, nullified nine decisions by prosecutors not to prosecute. And only once did the prosecutor actually reverse his original decision.

27. The petition for court review system as seen above is not effective in controlling the activities of the investigative and prosecution agencies because the scope of cases allowed for court review is very limited. The fact that the decision of the Constitution Court to nullify a decision of the prosecutor does not have power to coerce the prosecution agency to actually undertake prosecution is demonstrative of the impotence of the system. Moreover, it is easy to see that the two ways to seek remedy mentioned above are totally powerless in the case that the investigative agencies are insincere in their pursuit of the cases. It is impossible, practically speaking, for the court and the Constitution Court to conduct their own investigation about matters that were not looked into originally by the investigative agencies.

28. There is no system in the area of appointment and dismissal that will help establish the investigative agencies' independence and impartiality away from the influence of the state political power. The highest officer of the Public Prosecutors' Office and of the police, and all other high officials, are appointed by and responsible to the President. It is inevitable that they are submissive to the President who has the powers of appointment, dismissal, and promotion.

29. The investigative agencies in South Korea lack the commitment to impartiality and to the protection of human rights in their conduct of investigations. The situation is especially bad in the cases of political significance.

A. The investigative agencies often fail to pursue investigation into cases which involve high level government officials. Furthermore, sometimes they attempt to hide the truth in order to bring a conclusion which absolves the guilt of the involved high ranking officers.

(1) In February 1991, it became known that the mayor of Seoul had decided to

specially provide land developed for housing in an area called "Su-Suh" to a housing association (an association formed in order to build housing for its members) that was connected to a large corporation, disregarding the pertinent laws. From this, the housing association and the corporation came to painlessly earn hundreds of billion Won (South Korean currency). However, it came to be known that before the mayoral decision took place, various people including members of the President's secretarial staff, chief executives of the ruling party, Minister of Construction, Minister of Justice and the involved officials of Seoul city government had colluded to bring about that decision. Among the general public, the suspicion that the President himself was also involved became widespread. The public opinion demanded that the Public Prosecution Office investigate this matter thoroughly. The Public Prosecutors' Office first acted as if the matter was not significant enough to be taken seriously , but gave in to public pressure in the end and began to investigate. The Public Prosecution Office indicted the involved parties after determining that the involved corporation's owner had bribed the President's secretarial staff and the congressmen. During its investigation process, the Public Prosecutors' Office made sure that the involved parties were kept out of the the reach of the public. Much of the public believe that the chief objective of the Public Prosecutors' Office was not to seek and divulge the truth, but rather to prevent the top ranking officials' criminal behavior from being known.

(2) In Janaury 1992, the owner of Korean's largest "Jae-Bul" (huge business conglomerates) announced at a press conference that he had made personal contributions of billions of Won each year to the President until just two years ago. President Roh conceded having accepted the contributions. It is highly likely that this kind of giving and receiving of money constitutes a crime according to Korean laws. Nonetheless, the Public Prosecutors' Office did not undertake an investigation.

B. The investigative agencies are also wary of dealing with cases which may have some disadvantageous influence on themselves or to the state power itself.

(1) In January 1987, a college student named Park Jong-Chul while under questioning at police headquarters by five policemen, died from torture. Upon finding out about this incident, the Chief of Police Headquarters and other high ranking officers demanded that the doctor who performed the autopsy on Kim's body deny that

there were torture marks. However, it came to be known that he had died from torture and two policemen were named as the perpetrators. On January 24, 1987, the Public Prosecutors' Office indicted the two after conducting investigations. At the same time, newspapers were suggesting that there were more than two who tortured Park. It is believed that the Public Prosecutors' Office came to know that three additional policemen had participated in the torture. In May, a group of priests, who had been conducting their own investigations into this matter, announced that there had been three other policemen who had tortured Park. Only then did the Public Prosecution Office come forward to indict the remaining three.

(2) Please refer to Paragraph 198 of this report regarding additional cases where the investigative agencies failed to investigate the cases of torture.

C. The investigative agencies heavily discriminate against the defendants according to their class background and political orientation. Large numbers of workers are arrested and indicted in relation to Labour disputes. However, there are very few cases of arrest or indictment of owners or of management people who have been charged by the workers as having violated laws through unfair Labour practices or use of violence. There is similar discrimination in the application of the National Security Law. Of the people who have visited North Korea or have attempted to make contacts with persons from North Korea, only those who are critical of the government have been given severe punishment (See Paragraph 112).

D. The investigative agencies in South Korea are believed to be heavily influenced by the holders of political power, personal relationships, and bribery. Furthermore, much of the investigation work by the agencies are criticized for lack of thoroughness and lack of impartiality.

30. The people who work in the investigative agencies do not feel a strong obligation to try to uphold and protect human rights, and not surprisingly, the Korean people's trust in the investigative agencies is quite low. In November 1990, a survey of the police officers was conducted by the Korean Criminal Policy Research Institute. 75 percent of the respondents said that with suspects of heinous crimes it was acceptable to restrict their legal rights; 62.3 percent also said that with suspects of heinous

crimes it was acceptable practice to inflict physical pain. The same institute conducted a survey of 1,000 persons living in Seoul in July 1991. 41.2 percent did not think that the police were supportive of the people. The reason cited by 27.7 percent of those persons was that police do not respond quickly to requests for help. The reason cited by another 25.5 percent was that the police are swayed by lobbyists or special interests in their dealings with the cases. In another survey conducted by the Seoul Bar Association of its members in December 1989, 84 percent thought that the Public Prosecution Office, even after 1988, was failing to maintain a political neutral position.

31. As can be seen above, there is little possibility for remedy of violation of rights through the services of the investigative agencies. Given such a situation, there is a broad-ranging consensus for the need to establish a system of special prosecutors. Because opposition parties and journalists can not expect that the Public Prosecution will be impartial in its investigation of political cases, they demand that a law be made which requires those cases to be investigated and prosecuted by special prosecutors who would be appointed on a case by case basis. This demand is reiterated each time that cases which arouse suspicions of wrongdoings by high ranking officials, such as the torture-induced death of Park Jong-Chul and the Su-Suh land allotment case, occur.

Remedies through Trial by Court

32. There is a need to strengthen independence and impartiality of the courts to enable them to provide effective remedy for the violation of rights. However, the judiciary in South Korea is known to lack both independence and impartiality. This issue is discussed in Paragraphs 42-62 of this report.

Remedies through the Constitution Court

33. The Constitution Court was newly established by the new Constitution which became effective in February 1988. Before the establishment of the Constitution Court, powers to handle constitutionality issues were at times given to the Supreme Court, and at other times, to a separate institution created for that purpose. However, these were basically nonfunctional. The Constitution Court is composed of a total of nine judges on the basis of three nominations by the National Assembly, President and the Chief Justice

of the Supreme Court, respectively. Since its establishment in September 1988, the Constitution Court has functioned actively, unlike any of the previous constitutional courts. As mentioned in Paragraph 43 of the government report, the Constitution Court has nullified a number of laws upon finding them unconstitutional, and have acted on a number of constitutional petitions. The activities of the Constitution Court can be valued highly as having established itself as an important means of remedy for violation of rights.

34. Nevertheless, the scope of the Constitution Court is clearly very much limited. It is restricted from addressing many of the undemocratic aspects of the controversial repressive laws which are instrumental in the maintenance of the present ruling political power. In April 1990, the Constitution Court brought down a decision which basically declared the constitutionality of the National Security Law clauses concerning actions which "praise and give encouragement to an anti-State organization" saying that "these provisions are not inconsistent with the Constitution because these provisions are applied when the security or safety of the State is in danger or when the offenses undermine the basic order of democracy." And in January 1991, it also found the clause prohibiting the third party intervention in the labour-related laws (See Paragraphs 134-139) to be constitutional. Furthermore, in July 1991, it also found the Private School Act (Law No. 1362 of June 26, 1963 as last amended by Law No. 4376 of May 31, 1991) which deprived the teachers of private schools of the three rights of Labour (right to organize a union, right to collective bargaining, and right to strike) to be constitutional. To expatiate on the last decision, Article 33 of the Constitution guarantees in general the three rights of Labour to all laborers, except public service personnel and those engaged in important areas of the defense industry (See Paragraph 265 of the government report). Since teachers of private schools are not public service personnel or laborers in important areas of the defense industry, the three rights of Labour should be guaranteed. Nonetheless, Private School Act prohibits in general Labour organizational activities and also stipulates that those who violate this rule can be fired. In 1989, 670 private school teachers who had joined the National Teachers Labour Union were fired under this provision. The Constitution Court received in October 1989 a petition asking it to judge the constitutionality of the above Private School Law provision. Though Article 38 of the Constitution Court Law (Law No. 4017 of August 5, 1988 as last amended by Law No. 4408 of November 30, 1991) stipulates that

the Constitution Court must make a decision within 180 days from the receipt of the petition, the Constitution Court put off making the judgment without any reason for a year and three months, and in the end, it judged that the Private School Act provision was constitutional.

Restriction of Rights during State of Emergency - Article 4

Martial Law

35. The Constitution and the laws of the South Korea allow the President to declare martial law only in time of war, armed conflict or similar national emergency. Martial law is divided into two types: emergency martial law and "*kyungbi*" (defensive) martial law. Emergency martial law can only be declared when, due to war or extreme social chaos, it is very difficult to maintain normal administrative and judicial functions of the nation (Article 2 of the Martial Law Act, Law No. 3442 of April 17, 1981).

36. Nevertheless, the emergency martial law has in reality been abused by the military clique which has illegally seized the state power through a coup d'etat or by the President intending to consolidate his power disregarding the Constitution to baffle the people's anticipated resistances. In October 1972, President Park Chung-Hee declared martial law even though there weren't any conspicuous signs of social disorder, nor of national emergency. Then, President Park went on to concentrate all the political power to himself, and to promulgate a new Constitution which justified his actions. A martial law was also declared in virtually all parts of the country in October 1979, following the assassination of President Park despite the fact that there was no conflict with an enemy nor extreme disturbance of the social order. Over six months later, in May 1980, military clique which had illegally seized the power, expanded the martial law to all the country. Furthermore, the military clique established an illegal organ of power named National Security Legislative Council to formalize its hold on power. It is widely recognized that there were no grounds that warranted the expansion of the martial law.

37. The judiciary, even though the basic rights of the people were violated as a direct result of the abuse of the power to declare the martial law, has not provided any remedies. Although the judiciary is mandated by the Constitution and the laws of the country to review the legality of all administrative actions, and no exception is

provided as to the martial law, from 1960 to 1982, the Supreme Court refused to declare the state of martial law unconstitutional or illegal maintaining that "the declaration of an emergency martial law is a decision of highly political and military nature, therefore, the judiciary has no power to decide on its legality" (Supreme Court decision 1980-Do-2756 of January 23, 1981, etc.). The Supreme Court, therefore, gave up a power that was mandated to it. As long as the judiciary maintains this position, thus creating an unbalance between the powers of the executive, judiciary , and legislative, it leaves the door wide open for future abuse of basic rigths through the abuse of the powers to declare a martial law. This abuse is in violation of Article 4, Paragraphs 1 of the Covenant.

Garrison Decree and Anti-Riot Combat Police

38. The Garrison decree (Presidential Decree No. 14949 of April 20, 1970) allows the military commander having jurisdiction over a certain region to dispatch military troops, in times of calamity or emergency situations, to be stationed, guard, and patrol the region upon request from the provincial governor or major city mayor. The troops thus dispatched can, on police request, arrest civilian persons suspected of a crime, and can use weapons as needed to suppress a violent riot. In October 1971, military troops were dispatched to the Korea University campus, invoking the decree, and captured a large number of students who were holding an anti-government assembly. At the time, the troops used severe violence against the students.

39. According to the Constitution, a presidential decree can only be established concerning matters necessary to enforce the law, or in cases where a law so mandates on the basis of specific and concrete details (Constitution, Article 75). However, the Garrison Decree has established a power to mobilize military troops without a mandate from any law for an action not necessary for the enforcement of any law. Therefore, it is clearly unconstitutional. The decree describes the requirements for mobilizing troops using a very vague phrase, "in times of calamity or emergency situation," and does not provide any safeguards to control the abuse of the powers given by the decree. This leaves the door open for infringements of human rights in the pretext of calamity or emergency situation.

40. In South Korea assemblies and demonstrations organized by political oppositionists

to the government are suppressed by combat police. Combat police is a special branch of the police under the Ministry of Home Affairs. This branch is constituted of young men who have been mandatorily conscripted from the pool entering the national military service. They are formally given exemption from military service by serving in the combat police. However, it's structure and training are in military fashion, and it is in reality the same as mandatory military service. The combat police is notorious for the severity of violence it uses against people in the suppression of an assembly or demonstration. In April 1991, a student was killed by continuous beating with iron pipes wielded by a group of combat police who chased him as he was trying to run away (See Paragraph 170).

41. The Garrison Decree and combat police are systems by which the military can be mobilized without the declaration of martial law. Furthermore, in view of the fact that the combat police is a permanent organization with continued activities, it can be said that South Korea is, in a way, under a permanent state of martial law. In view of this, the Garrison Decree and the existence of combat police appear to contradict the spirit of Article 4, Paragraph 1 of the Covenant, which requires that restrictions on basic human rights be placed only to the extent strictly required by the exigencies of the situation.

Independence of the Judiciary and the Right to a Fair Trial - Articles 2 and 14

42. As mentioned in Paragraphs 198 to 202 in the government report, the Constitution and the laws of South Korea declare that a judge must preside over a trial independently according to his conscience on the basis of the Constitution and the laws. The Constitution and the laws also provide various mechanisms to guarantee the independence and impartiality of the trial. However, a review of the judgements and decisions of the judiciary reveals that the judiciary is not independent from the administrative government. In fact, the judiciary can be criticized for having handed down numerous judgments that are inconsistent with the Constitution and the laws.

Reality of the Independence of the Judiciary

43. Due to the very nature of the issue, it is difficult to measure the independence of the judiciary on the basis of evidence. However, an examination of how the judiciary

treats cases which are politically sensitive can lead to an understanding of the true extent of the judiciary's independence from the administrative government.

44. The Public Prosecutors' Office has at the various levels of its organization special sections and special prosecutors dealing with cases involving public security. These sections or prosecutors either investigate cases directly or supervise the investigation of those cases deemed politically sensitive by the Agency for National Security Planning or by the police. Examples of politically sensitive cases are cases involving people arrested for violating the National Security Law or for participating in anti-government assemblies. Workers suspected of violating the labor-related laws in their efforts to form a trade union or to stage a Labour strike are also handled by the "public security prosecutors." Even if a case is a simple criminal case, it is handled by "public security prosecutors" if it seems that the crime has been committed by "seditious persons." For example, if a university student who wants to obtain employment as a production worker to participate in the Labour movement, fabricates false I.D. documents to hide his or her student identity, then the case will be handled by the "public security prosecutors." The cases which are handled by "public security prosecutors" are known as "public security cases." Generally, investigation and prosecution of these kinds of cases are conducted in a biased manner, advantageous to the state power. These so-called "public security cases" are an arena where torture and violation of human rights occur most commonly and frequently.

45. Once an indictment is made on a "public security case" it is a common practice for the courts to try them in a manner different from other criminal cases. The trial dates of general criminal cases are usually allocated in order of the indictment's registration date. However, "public security cases" are tried usually much earlier or much later than would be the normal date, depending on political considerations. The members of the judiciary which preside over the trials of public security cases are often found not to be impartial, but instead intent on discrediting the assertions by and testimonies for the defendants and their defense attorneys.

46. It is not very difficult to anticipate the judgement and decision of the court in public security cases. In most cases, the content of the indictment prepared by the prosecution is recognized by the court as the facts of crime and guilt. The text of the

judge's decision is in most cases a virtual copy of the text of indictment.

47. The principles of trial by evidence and innocence until proven guilty are repeatedly ignored. The court is reluctant to grant motions by the accused or their defense attorneys to review the evidence, including examining the witness. Evidence presented by the defendants or their defense counsel is regarded as unworthy, and the evidence presented by the public security prosecutors is given much more credence.

48. The principle of legality [*nullum crimen nulla poena sine lege*] is often neglected. The National Security Law and the provision prohibiting the third party intervention in the labor-related laws (See Paragraphs 134-139) are good examples of laws which violate the principle, because what constitutes a crime is too vaguely described in those laws. As the courts try the public security cases that involve the violation of these laws, they have repeatedly failed to maintain the spirit of the principle of *nullum crimen sine lege*. That is, instead of clarifying the laws through strict, narrow interpretations, courts have admitted a very broad range of crimes under those laws, by very loosely interpreting the already vague laws. Basically, the courts have accepted wholeheartedly the opinion of the public security prosecutors.

49. It is customary for a prosecutor, following the examination of the evidence, to suggest a sentence, such as "Please find him guilty, and hand down a sentence of three year imprisonment". At the time the prosecutor submits the indictment, he usually also sets the punishment that he will suggest to the court, with the approval of a higher official. The sentence handed down by the court in public security cases is nearly always within 40 to 60 percent of the sentence requested by the prosecution. This is an indication that the court is not independent from the public security prosecutors. It is also an indication that the efforts of the defendants and their defense counsel in the process of a trial following the indictment are in vain.

50. The requests for the issuance of a arrest warrant by a prosecutor in the allegedly public security cases are granted virtually 100 percent of the time by the courts (See Paragraph 205). Challenges to the legality of confinement or requests for bail are, in almost all cases, not admitted by the courts.

51. It is also questionable whether the judiciary is independent and impartial in its trials even in ordinary criminal cases. According to the statistics of the Supreme Court submitted to the National Assembly in September, 1991, out of the 90,255 accused for whom the courts of the first instance rendered its judgments throughout the country during the period of January to August, 1991, only 392 persons(0.43 percent of the total number of the accused) were declared innocent. In the cases of the appellate courts, out of the 25,064 accused, 202 persons(0.81 percent of the total number of the accused) were declared innocent during the same period. The Supreme Court announced its judgments in the criminal cases involving 2,872 accused that were under arrest during the period of January, 1990 to August, 1991. The Supreme Court nullified the decisions of the appellate courts involving 46 accused under arrest (1.6 percent of the total number of the accused) and returned the cases to the appellate courts. These figures point to two possible conclusions. One, the Public Prosecution in South Korea is very impartial and judicious; or two, the court is subordinate to the Public Prosecution. However, it is generally accepted that the former is not the case.

52. Among the general Korean population and in the legal community, distrust of the judiciary is widespread. According to the survey conducted by the Seoul Bar Association of 1,000 attorneys at law from all over the country around June, 1989, 61.5 percent said that they did not believe that independence of the judiciary is being achieved. Also, 73.5 percent believed that there has been no change in the way that the courts handle the public security cases since February, 1988.

Factors Obstructing the Independence and Impartiality of the Judiciary

53. From October 1972 when President Park Chung-Hee concentrated the state power in the hands of the President disregarding the Constitution, until 1987 when the then military government promised democratization in the June 29 Declaration, the political and social situation in South Korea was characterized by overt oppression of the people through military dictatorships. In this period of oppressive rule, the judiciary, just like the other institutions such as the media, were under the strict coercive control of the military regime. Agents of the Agency for National Security Planning (formerly known as the Korea Central Intelligence Agency) and the Military Security Command (now known as Kimusa) - the central apparatus of the military regime for the maintenance of power -- were, practically speaking, permanently stationed at the courts, keeping the judges

under constant surveillance. The judges had to serve the instructions and intentions of the military regime. There were very rare cases in which judges handed down sentences that didn't match with the intentions of the regime. However, these judges were soon forced to retire or transferred to the provinces. Such transfers are generally accepted as serious disadvantages to the judges concerned in South Korea. The people believed that the judiciary was forced to conduct actions in violation of their conscience against the will. However, as time passed, a breed of judges who actively cooperated with the regime in order to elevate their status and gain power began to appear in the judiciary. These people have come to dominate the higher authority positions of the judiciary, and it was inevitable that they have led the way in destroying or at least impeding the independence and impartiality of the courts in order to maintain the dictatorial regime.

54. In 1988, the social atmosphere in South Korea began to change with the inauguration of General Roh Tae-Woo who was elected president on the basis of the June 29 Declaration. The fear that dominated the society began to dissipate. Direct surveillance of judges by security agents also seems to have ended. Situation no longer seems to warrant actions "against the will" of the judiciary in violation of their conscience. However, as examined above, the reality is that the judiciary is far from independent and impartial. It is difficult to conclude that the situation is much better than before 1988.

55. The failure of improvement in the judiciary is greatly interconnected with the level of democratic development in South Korean society as a whole. Lack of improvement is not just due to the laws and the institutions which regulate the organization and administration of the judiciary.

56. One reason for the judiciary not being independent and impartial is the continued presence, even after 1988, of those judges who collaborated with the dictatorial regimes in the past and who continue to act in the same way. This viewpoint is shared by 90 percent of those surveyed by Seoul Bar Association around June, 1989, as mentioned above.

57. The lack of the improvement in the judiciary is also due to drawbacks in personnel

management, in appointments, promotions, and assignments.

58. The judiciary of South Korea inherited its institutions and personnel from the colonial judiciary established by the Japanese. Judges during the colonial times (1910-1945) were appointed from the pool of people who passed the judiciary examination. Judgeship was regarded at the time as the highest possible position a Korean person could reach. Judges enjoyed high social status, reigning over the rest of the colonized population. When Korea was liberated in 1945 and an independent government established in 1948, the colonial system remained in place. The judiciary of the new nation was simply a continuation of the same persons who had been in the judiciary during the colonial period. The judicial system and the attitude of judges remained unchanged. Up to the present, judgeship is a most highly valued position in Korean society. Many of the brightest hope to become judges. The law department in colleges are filled with the most intelligent young people who are aspiring to become judges.

59. Persons hoping to become a judge must pass the national law examination and serve as trainees in the national Judicial Research and Training Institute for two years. People who complete the two year training program are qualified as either judge, prosecutor, or attorney at law. The Chief Judge of the Supreme Court appoints a certain number of people out of the total candidates qualified for judges. When the number of candidates exceed the vacant positions, the national law examination scores and the scores of the various tests undertaken during the training programme are considered before the appointment. The national examination which is held once a year produce some 300 qualifiers. Only about 80 persons out of the qualifiers are ultimately appointed judges. The total number of law students in a given year is about 6,000 and the number of people sitting the national examination in a year is about 15,000. Generally people who apply to become judges are those who have the highest scores overall. The national law examination and the tests conducted during the training programme are tests on the technical knowledge of law. The process of judge selection does not take into account the person's character or understanding of democracy, necessary for the integrity and independence of the judiciary. It is inevitable that under such a selection system, the judiciary will attract people who are mainly concerned with high social status, rather than the independence, impartiality, and

integrity of the judiciary.

60. Once a person is appointed as a judge, he or she is assigned as a district court judge. Then as the person acquires experience, he or she may be promoted in the following order: high court judge, chief of a department of a district court, chief of a department of a high court, chief judge of a district court, and chief judge of a high court. A judge is reassigned to different regional posts every two to three years. Status of judges of the same title is generally considered to differ according to the region, that is, Seoul or some other region, and then even in Seoul, whether one is in the main court or in a branch. Judges, apart from the Supreme Court judges, serve a ten-year term. At the end of the term reappointment is considered. Appointment of judges, including reappointment, is made by the Chief Judge of the Supreme Court on the basis of the agreement of the panel of Supreme Court judges. However, promotion and changes in assignments are decided solely by the Chief Judge of the Supreme Court. Reasons for decisions on reappointments, promotions, or changes in assignment are not made public. However, there are cases which suggest that judges who have brought down decisions disadvantageous to the state power were disadvantaged during later various personnel decisions.

61. The lack of a way of selecting judges capable of maintaining the integrity and independence of the judiciary and the continuation of the bureaucratic promotion and reshuffling system are two factors keeping the South Korean judiciary from becoming independent and impartial.

62. Another factor which obstructs the independence and impartiality of the judiciary is the strength of the influence of the Public Prosecution. The public prosecutors at times threaten to use their right to investigate on the judges who do not make judgements or decisions as the Public Prosecution requested. For example, in March 1990, a public prosecutor working in the Eastern Branch of the Seoul District Prosecution Office requested a warrant to be able to seize North Korean books that were being sold in a bookstore. The judge who was in charge of this case denied the request for the warrant, saying that the reading of these books might be no danger to the state, in fact, it might even be educational. And according to a newspaper, the Public Prosecution, unhappy with the judge's decision, was investigating the possibility that what the judge had

said might be in violation of the National Security Law (Dong-A Daily News, May 28, 1990).

Publicity of Hearings

63. Often, hearings of civil and criminal cases which are supposed to be public are made inaccessible in South Korea. For important "public security cases", the anti-riot combat police inspect the people who want to attend the hearing. The combat police even threaten the people to make them return home. Moreover, the court sometimes makes a lot of police officers occupy the courtroom, which results in creating an oppressive atmosphere, and reducing the empty seats for the general public. Furthermore, there are times that though there is no reason to have a closed door trial, the court holds the trial in a place in which public access is restricted, such as the detention institution.

64. According to South Korean law, arguments and examinations of evidence must generally take place orally in the courtroom. However, in reality, except for interrogation of the witness, much of the arguments and examinations of evidence are conducted outside of the courtroom through letters. In the case of criminal lawsuits, documents of inquiry and investigation and other documentary evidence are simply put on the record as having been submitted in the courtroom, and a reading of those materials by the judge, alone in his room, substitutes for an examination of evidence. The same occurs in civil lawsuits as well. And it is the norm for the judge to examine the briefs containing arguments of the parties outside of the courtroom. Therefore it is not a surprise that the people who attend the trial cannot figure out what is going on. One of the probable causes of these kinds of practices is the fact that the judge has too many cases to handle and thus does not have enough time to spend in the courtroom on each case.

Presumption of Innocence

65. In South Korea, there are laws and practices which, in fact, presume criminal suspects and accused persons to be guilty.

66. Most of the accused are investigated and tired under arrest. The suspects and the accused persons who are under arrest are treated in the same manner as those who have

been convicted (See Paragraph 210) . The accused under arrest must wear a poor quality uniform made specifically for them while he or she attends the trial. According to Article 280 of the Code of Criminal Procedures (Law No. 341 of september 23, 1954 as last amended by Law No. 3955 of November 28, 1987), the accused is not supposed to be handcuffed. It is often observed, however, that the accused is handcuffed for the trial. The Special Measure Law Concerning the Punishment of Specific Violent Crimes (Law No.4295 of December 31, 1990) allows the court to restrain the accused during the trial when the accused is charged with one of the violent crimes specified in the law, such as robberies and joining an organization whose purpose is to commit violence, if the court deems that the accused might act violently, or escape (Article 11). As a practical matter, they are often made to attend the trial while handcuffed and tied up with rope, sometimes even tied up with leather ropes and surrounded by guards, even though there is little reason to suspect that the accused may turn violent or attempt to escape. Under the code of Criminal Procedures, if the prosecutor has asked for the death penalty, life imprisonment, or ten years or more of imprisonment, the accused under arrest is not freed even if he is acquitted, until the case is completely settled (Proviso to Article 331) .

67. With the way things are presented, the court is likely to assume the guilt of the accused even before the trial is under way. As the government report points out, according to the Rules of Criminal Procedures, documents that make these kind of presuppositions cannot be attached to the indictment. However, the public prosecutor usually submits investigation documents to the court many days prior to the trial. Since a court can review the documents submitted by the public prosecutor even before its admissibility as evidence is verified, a court can become biased against the accused.

68. The rule which states that the public prosecutor has the responsibility to prove guilt and that the accused has the benefit of the doubt is generally not observed. This is substantiated by the fact that over 99 percent of the accused are convicted (See Paragraph 51).

69. A suspect can be prohibited from travelling under the pretext of serving investigative needs (See Paragraphs 259-260). If a public official or a school teacher

is accused, then that person will be fired from that position pending the trial. Although the Attorney at Law Act (Law No. 3594 of December 31, 1982 as last amended by Law No. 3992 of December 4, 1987) states that when an attorney at law is accused, then the Minister of Justice can bar the attorney from practicing law, the Constitution Court decided that this provision violates the rule of presumption of innocence on November 19, 1990 (Constitution Court, 90-Hun Ga-48).

Notification of the Reasons for Arrest or Detention

70. Although the Code of Criminal Procedure requires that a suspect be immediately notified of the reasons for his or her arrest or detention, the prosecutor or the police rarely makes such notifications, as a practical matter.

Assistance of Defense Counsel

71. As discussed in Paragraphs 80 to 95 of this report, the right of the suspect and the accused to receive assistance of defense attorneys is being violated.

Right to Defend

72. Quite a few suspects or accused cannot afford to hire defense attorneys. Due to the excessively limited number of attorneys at law, the requests for legal counsel cannot be met. As of April, 1992, there are 2,408 attorneys at law practicing in South Korea: this means only one attorney per every 18,000 people in South Korea. If a suspect or accused does not have a defense attorney, he or she must prepare his own defense, with the help of friends and family. However, it is difficult for detained accused to get help from family or friends because the prison severely limits the number of visits. A suspect or accused in prison can only meet no more than three persons at one time only a weekday for just about ten minutes under the supervision of a warden. Moreover, in "public security cases", the authorities severely limit non-family visitors in order to prevent political discussions. For example, in the case of Mr.Kim Keun-Tae, charged with violating the National Security Law, prison authorities did not allow Kim's colleagues and friends who visited the prison to meet with him even the six times that they tried to do so in January, 1991.

73. The Code of Criminal Procedures grants the defense attorney the right to copy documents relating to the case including evidence. However, the accused is not given

such a right, but only given the right to see the records of the trial (not including investigative documents) (Article 35 and Article 55, Paragraph 1). Often an accused cannot be fully informed about one's own case just from the records of the trial. In actuality, the accused often does not even know of the right to the trial record, or the prison personnel or the court personnel refuse to let the accused exercise that right. An accused who does not have a defense attorney often has to attend the trial with inadequate information about one's own case.

74. The Code of Criminal Procedures does not grant the suspect, the accused, or their defense attorneys the right to see or copy the evidence which the public prosecutor has. Thus, the party of the accused cannot examine such evidence until the public prosecutor submits it to the court. Given the limitation of the detention period that works to the disadvantage of the accused (See Paragraph 203) and the rather tardy opportunity to examine the public prosecutor's evidence, the defense party often does not have enough time to prepare an adequate defense.

75. Examinations of witnesses proceed by asking leading questions in both the civil and the criminal procedures. A court clerk writes what he hears from the witness in the records of litigation. The testimony is very rarely stenographed or mechanically recorded and the contents of the records of litigation are often inaccurate. In general, judges appear to gain a confident belief not on the basis of the testimony they have heard, but after reviewing the records of litigation where the testimony is written. Moreover judges tend to be reluctant to give much weight to testimony as evidence since it is usually obtained through asking leading questions. Such trials, mainly based on documents, may lead to a decision far from the truth. Especially in the criminal case investigations, documents prepared by investigative agencies may be given prevailing value as evidence, which results in the disadvantage of the accused. Judges who have gained a confident belief of guilt are often reluctant to examine evidence favorable to the accused.

Right of the Accused to Attend Trial

76. Special Measure Law Concerning Punishment of Anti-government Activists (Law No. 3045 of December 31, 1977) prescribes that if a person, who has committed a crime classified as anti-government activity in this law including a violator of the National Security

Law, does not come back from abroad, the court can have a trial and sentence without the presence of the accused. This law also prescribes that the court can also confiscate assets of the accused in addition to the normal punishment prescribed by law. Also, unless the accused shows up, then the defense attorney cannot be present at the court either. The court gives the verdict after hearing only from the prosecutor, without even an examination of the evidence. This law does not limit the amount or the value of the accused's assets which can be confiscated, so the court can confiscate all the properties and assets of the accused. Lastly, if an accused does not show up for trial, then there can be no appeal.

Right to Examine Witnesses

77. The Code of Criminal Procedures prescribes that if the public prosecutor suspects that a person who has given a statement to the public prosecutor or to the police will give a different testimony at the trial, the public prosecutor can request an interrogation of the witness before the trial begins. In this case, if the judge acknowledges that the presence of the suspect or accused and the defense attorney might be an impediment to the investigation of the case, then the judge can disallow their presence (Code of Criminal Procedures, Article 221-2). This practice is being used in cases with important political significance. A public prosecutor examines the witness for a lengthy period, while the witness is cut off from outside contact, using both threatening and pacifying techniques in order to secure a testimony unfavorable to the accused. Immediately after that, the public prosecutor requests the interrogation of the witness by the judge, and the judge lets the public prosecutor examine the witness without the presence of the suspect or accused nor the defense attorney. Then, still under the influence of the public prosecutor's psychological harrassment, the witness makes a testimony in line with public prosecutor's wishes. When the trial takes place, the court documents containing the witness testimony, taken down without the presence of the accused or the defense attorney, are admitted as evidence unconditionally (Code of Criminal Procedures, Article 311).

78. Under the Code of Criminal Procedures, a written statement made by anyone other than the accused cannot be used against the accused unless the accused or the defense attorney agrees otherwise. The hearsay rule is being recognized (Article 313, Paragraph 1). However, the Code of Criminal Procedures acknowledges the exception that if the

witness cannot be present in the court "due to death, disease or any other cause", then a written testimony that is made to the investigative authorities can be used as evidence (Article 314). If we look at the reality of the criminal procedures, the investigative agencies prepare unfavorable testimonies beforehand during the investigation, and then the public prosecutor submits them at the trial as evidence. If the accused and the defense attorney object to its use as evidence, the public prosecutor requests to have the person who gave the statement as a witness in court. Then, the court sends a subpoena to the address that the witness recorded on the documents. If the address was not correct or the witness has moved, then the subpoena returns to the court. The court next asks the police to locate the witness. If the police sends the report that the witness cannot be located, the court makes an exception to the hearsay rule and uses the written statement as evidence. The Supreme Court confirms that such procedures are adequate and appropriate (Supreme Court decision 87-Do-691 of June 9, 1987). As a result, the accused never has an opportunity to question the witness who spoke against him and is convicted on the basis of the witness' statement. In extreme cases, we cannot exclude the possibility that some malignant officers of investigative agencies might contrive unfavorable statements by a false witness in order to secure a conviction.

Forced Confession

79. As discussed in Paragraph 205 of this report, most of the accused are under arrest during the investigation and pending trial and suspects are often compelled to confess guilt, in fear of being detained and cut off from outside contact for a long time. Courts usually sentence heavier punishments to the accused who have denied the charge or refused to talk in the trial, on the ground that the accused does not repent his crime. This forces the accused to decide to confess guilt, giving up any defense, in order to be released early upon receiving alleviated penalties.

Right to a Defence Counsel - Articles 9 (2), 14 (3)(b),(d)

80. The Constitution and laws of South Korea guarantees, as explained in the government report (paragraphs 151 and 204), the suspect's and the defendant's right to access to legal counsels. In fact, however, this right has been widely infringed on. It is because the investigative agencies are accustomed to use the arrest or the detention in order to

compel the suspect to confess or to obstruct the defendant's preparation for trial.

81. In South Korea, there are basically three ways that the right to a defense counsel is infringed upon: 1. denial of the detainee's access to a lawyer by the investigative agency. 2. obstruction or delay of the contact between the defense counsel and the defendant by various methods. 3. infringement of the confidential communication between the detainee and the counsel or giving pressures or influences on both the detainee and the counsel during their meetings.

82. Political prisoners who are classified as "public security cases" are usually subject to restriction of their rights to the defense counsel. Especially those interrogated in detention by the Agency for National Security Planning, the Military Security Command or the Security Division of the National Police Headquarter for their alleged violation of the National Security Law have suffered the most serious infringement. The suspects who are investigated by these agencies are generally taken illegally without the warrants of arrest and, for at least 48 hours, they are interrogated and compelled to confess with being isolated in detention incommunicado. (The Supreme Court ruled that the illegal detention period before the issue of the warrant of arrest is excluded in counting the lawful period of detention, decision on December 30, 1991, 91-Mo-31) The agencies request the warrant of arrest on the base of the result of the initial interrogation during the illegal detention and then notify the detainee's family of the issuance of the warrant. In the notice to the family, only the general nature of the crime is recorded, for example, "violation of the National Security Law." Only rarely are the charges described in more detail. In many cases, the suspect cannot see the warrant of arrest: even the defense counsel often can not help spending several days to receive the copy of the warrant of arrest at the Public Prosecutor's Office or at the court.

83. In the case of investigation by the Agency for National Security Planning, the suspect is confined in a basement room of the Agency, after a short stopover at the Chungbu Police Station for the execution of the warrant of arrest, for up to 20 days or more and forced to confess in a desperately oppressive atmosphere. The suspect must eat and relieve himself with being watched by the investigators during the whole period of detention. Going outside is impossible.

84. Different from other investigative agencies, the Agency for National Security Planning cannot be entered or contacted by civilians. Therefore, the family of the detainee or the counsel cannot demand contact with the defendant directly to the Agency. They must file an application to the Chungbu Police Station or the Chuja Police Box near the Agency and wait for a long time. When the Chungbu Police Station or the Chuja Police Box contacts the Agency, the Agency finally decide whether to allow them to meet the detainee, that is, in some cases, meeting is often denied altogether. In such case where meeting with the defendant is denied, the counsel or the family cannot even raise legal objection to the Agency because the personnel of the Agency only notify the fact through the police without appearing himself before them.

85. After the lawyer is allowed to meet once with the detainee, usually the investigators of the Agency for National Security Planning notify the lawyer that they will allow one more meeting when investigation is completed around the end of the detention period. The lawyer has no choice but to give up trying to contact the detainee because, in reality, there exists no way to change the Agency's policy in South Korea.

86. Occasionally, the lawyer who has requested contact with the detainee again, having obtained a court order which states that the meeting must be allowed, found himself that even the court order did not have effect to change the Agency's violation of the right.

87. The suspect is transferred to under the prosecutor's interrogation after 10 or 20 days of interrogation by the investigative agencies. From this point on, the suspect is held in the detention center until the conviction of the sentence or the release. At this stage, in most cases, lawyer's communication with the suspect becomes easier than before. But in some cases, the communication is obstructed intentionally. In ordinary criminal cases, the lawyer usually calls ahead and informs the officer of the detention center of the lawyer's planned arrival time. Then the officers of the detention center call out the detainee in advance so that the lawyer can meet his client on his arrival there. In case of political prisoners, however, a common practice is to call out the defendant after the lawyer's arrival, even if the lawyer called in advance, thus forcing the lawyer to wait for about 30 minutes to an hour in the interview room. Likewise, in case the lawyer wants to meet more than two detainees, the usual practice is for the detention center to bring out the second detainee while the lawyer is meeting with the

first one and make the lawyer meet the second just after the first meeting. To the contrary, in case of political prisoners, the lawyer has to wait for about one hour to meet the second client because they call out him after the meeting with the first is finished. Meetings are allowed only during weekdays and must end by four o'clock P.M., so the time allowed for lawyer's communication is very limited. Due to these differential practices, political prisoners' rights to access to defense counsel and to have adequate time and facilities for the preparation of the defence are often infringed upon.

88. When the prosecutor summons the detainee for interrogation, it becomes impossible to meet him in the detention center. Because there is no facilities for the detainee's communication with lawyers in the Public Prosecutors' Office, the lawyer has to search out the office of the prosecutor in charge or the detainees' waiting rooms. So often meetings are not possible at all or even if they are, they take place for a short while under the watchful gaze of the prosecutor, investigator or prison officer.

89. Another practice by which contact between the detainee and the defense lawyer is intentionally obstructed is shifting responsibility for an absent defendant to another party by the prosecutor and the detention center. For example, the detention center may claim that the detainee is not there, due to the prosecutor's summons, while the prosecutor in turn claims to not have summoned the detainee at all.

90. When the defense counsel meets political prisoners, officers of the investigative agencies, investigators or prison officers often monitor and record the dialogue between them. In the case of the Agency for National Security Planning, even photographs are taken during the meeting. These are examples of measures to restrict the rights of the detainees by giving unjust influence or pressure to both of the counsel and the detainees. The Constitution Court declared on January 28, 1992, that these practices of the Agency for National Security Planning are unconstitutional(91-Hunma-111). After this decision, things improved, but still the right to contact with defense counsel is infringed upon. On the day of the above mentioned decision by the Constitution Court, the Buchon Police Station denied Mr. Chung Gae-Taek, who had been arrested as a suspect for theft, to meet his defense counsel. The Buchon Police Station allowed them to meet on the following day, with monitoring and recording the conversation. The Korean Federal

Bar Association filed a criminal complaint against the police officers of Police Station to the Public Prosecutors Office for their denial and interference with the lawyers communication, but investigation has yet to be undertaken.

91. Another problem is that there is no interview room for the meeting between the defense counsel and the detainee in the Agency for National Security Planning, police stations, the Military Security Command and the Public Prosecutors' Office. Due to this situation, the lawyer has to meet the detained client in the investigator's office where the confidentiality of the communication is not guaranteed.

92. In South Korea, the defence lawyers are not allowed to present in the place of the interrogation of the suspect by the police or prosecutors. The suspect under the oppressive conditions has no choice but to decide by himself whether to exercise the right of silence or not. When he answers, then he must estimate what to say, without having the defense lawyer's advice about what will be of help for the defence. Another important fact is that the suspect under detention is isolated defenseless against torture and other mistreatment during the interrogation. Meanwhile, the right of the defendant to review his written evidence, drawn up from his statements during the interrogation, is not usually well respected and therefore, in occasion, the accused's claims that the written evidence does not agree with his statement during the interrogation are raised in the trial. Nonetheless, according to the Code of Criminal Procedure, the court may accept the content of the written evidence made out by the prosecutor in spite of the defendant denial of its credibility as long as the thumbprint is verified as the defendant's. (Legally the written evidence prepared by the prosecutor can be accepted as evidence against the accused when it satisfies two criteria: firstly, really be from the defendant and then secondly, voluntarily given. The defendant has the burden of proof if he wants to contend that the statement was not made voluntarily. Thus, the only criterion in question is if the statement was really from the defendant. And that criteria is readily satisfied by the thumbprint, as mentioned above.)

93. According to Article 244 (2) of the Code of Criminal Procedure, "the written evidence of the suspect shall be shown to or read by the suspect and the suspect shall be asked whether or not there are errors. If the suspect demands to add, delete or alter, such demand of change shall be recorded in therein." But the Supreme Court ruled

that the probative value of the written evidence is approved even if it has not been shown to or read by the suspect in violation of this article(May 10, 1988, 87-Do-2716). The Supreme Court also ruled that even if during the arrest or detention period the rights guaranteed by the Constitution and the Code of Criminal Procedure (the right to be informed of the reasons for arrest and detention, the right to a legal counsel, and the right to meet with visitors) have been denied, that would not make the reason to revoke the arrest and detention (December 30, 1991, 91-Mo-76). Under this situation where the court provides no legal remedies to the detainee whose constitutional and legal rights are violated, the rights referred to in the Constitution and other laws may be regarded as meaningless.

94. First Lieutenant Lee Ji-Moon disclosed that soldiers, who were voting through the absentee ballot for the general election of the National Assembly members on March 24, 1992, were forced to vote for the ruling party candidates by their seniors. He was immediately arrested for escaping from military service. His lawyers requested a review of the legality of his arrest and detention to the Military Court of the 9th Division of the Army, asserting unlawfulness of his arrest. When the review of the Court was held on April 1, the military police prohibited the entry of audience, and even forcibly dragged out one of his lawyers from the courtroom.

95. As the government report explains (paragraph 203 (d)), under certain circumstances the accused is entitled to a legal counsel appointed by the State. However in these cases, the lawyer is named without any consultation with the defendant. Because these lawyers appointed by the court *ex officio* are not compensated well for their services, they usually do not put forth their best efforts. Also even in the case where this lawyer who was appointed without consulting the defendant does a poor job and actually causes harm to the defendant, the court puts the responsibility on the defendant's shoulders (Supreme Court, May 21,1964, 64-Do-87). The system of state-appointed defense counsel may well be evaluated as ineffective; lawyers doing perfunctory work provide little substantial legal help.

Part III

The National Security Law - "the Constitution in the real sense"

- Articles 6, 9, 12, 15, 18, 19 and 26

96. The government report refers to the National Security Law ("NSL") in relation to the explanation of Article 19 of the Covenant (See Paragraphs 245-247 of the government report). However, its explanation is, in view of the gravity of its effect on human rights, totally insufficient because none of the many problems and human rights violations under the NSL are reported.

97. The NSL is, as its name suggests, a law which restricts the basic rights of the people in order to keep "national security." This law was created within the special context of division and hostility between South and North Korea. Because this law restricts human rights in all respects, and because it has been enforced with such great authority and efficacy, this law may be safely regarded as the "Constitution in the real sense" as far as human rights are concerned. The gravity and intimidating power of this law can be seen in that the people who have been punished under this law, and their families, are unable to resume a normal life in the society.

98. The NSL was first enacted on December 1, 1948, immediately after the establishment of two separate governments in south and north Korea, which were backed and supported by the U.S.A. and the U.S.S.R., respectively. At the time, a series of people's uprisings in the South threatened the newly established government. Consequently, the new law, which was composed of six articles, was promulgated as a temporary law to cope with the virtual civil war situation of the time. This law prohibited such activities as organizing or supporting an "anti-State organization." Originally, "anti-State organization" meant North Korea; but in reality it was so broadly constructed as to include all the organizations which opposed the South Korean government. This relatively simple NSL, even after the termination of the civil war situation, the Korean War and the restoration of peace, has been increasingly proliferated and reinforced through a series of military coups d'etat, and still exists today.

99. The NSL has been amended seven times. The main frame of the present NSL was set up through the amendments of 1958, 1961 and 1980. In 1958, the bill to revise this law to

40 articles was passed in the National Assembly by members of the ruling party only after the members of the opposition parties were dragged out by armed police troops. In 1961, the "Supreme Council for National Reconstruction" (See Paragraph 14) enacted the "Anti-Communist Law." In 1980, the "National Security Legislative Council" (See Paragraph 14) instituted by General Chun, promulgated the new reinforced NSL by absorbing the main contents of the then repealed "Anti-Communist Law" into the NSL. The NSL and the Anti-Communist Law were the most important instruments for the maintenance of the dictatorial regimes.

100. In May 1991, the government and the ruling party amended the NSL once again. The members of the ruling party, who formed the absolute majority in the National Assembly, rushed through the bill for amendment and passed it without any legal procedures, such as debates and voting, by excluding, from the start, the opposition members who had asserted the repeal of this law. Then the President immediately promulgated the amended law. As mentioned in Paragraph 246 of the government report, the amendment was somewhat influenced by the decision of the Constitution Court. However, this amended new law does not play any role to limit the infringement of human rights because of the problems explained below.

First, the amended law deleted a number of articles from the text. However, the deleted ones were articles which punished the contact with socialist countries other than North Korea. Naturally, those deleted articles had not been applied. Therefore, these changes had little influence on the application of the NSL in reality.

Second, the new NSL added "with the knowledge that [such acts] will endanger national security or survival or the basic liberal democratic order" in a number of articles. (The English translation of this phrase in Paragraph 247 of the government report does not appear to be accurate.) However, because this newly added qualification is an abstract concept with a meaning that is too vague for ordinary people to grasp, it does not limit the abuse of the law. In reality, the amended law brought about no changes in the interpretation or application of the NSL by the prosecution or the courts.

Third, the amended law, in Paragraph 2 of its Addenda, prescribes that the new amended law shall apply only to the actions committed after the enforcement of the new law and

the actions committed before the amendment shall be continuously subject to the old law. That is to say that there are two NSL's in force now in South Korea. One is the former NSL (Law No. 3318 of December 31, 1980) which is applicable to the actions committed before May 31, 1991 and the new NSL (the law as amended by Law No. 4373 of May 31, 1991) which is applicable to actions committed since its date of promulgation. Even though we accept the explanation of the government report that this law was "amended to eliminate the possibility of infringement of human rights" (Paragraph 247), this prohibition of the retroactive application of the new NSL is arguably inconsistent with Article 15 of the Covenant which guarantees the benefit of the subsequent change of the law.

Types and Cases of Major Crimes Punished by the National Security Law

101. Formation of and Association with an Anti-State Organization (Article 3)

This article specifies the crime of forming or joining an anti-State organization. Anti-State organization refers to "an association or group, within or outside of the territory of the Republic of Korea, organized for the purpose of assuming a title of the government or to disrupt the State, with a command and control system" (Article 2). [The underlined portion is the addition made in the May 1991 amendment. This applies to all quotations of the law found below.] The chief or those who have served a leading role in an anti-State organization may be sentenced up to death.

"Anti-State organization" originally referred to North Korea. However, a number of organizations within South Korea and abroad have been judged as anti-State organizations. Once an organization is determined to be an anti-State organization, not only those who formed or joined the organization, but also those who made communication or otherwise contacted with the organization are liable to punishment under this law.

The article concerning "anti-State organization", along with Article 7, Paragraph 3 which punishes the formation and joining an "enemy-benefiting" organization violates the freedom of thought guaranteed in Article 18 of the Covenant, the freedom of expression guaranteed in Article 19 of the Covenant, and the freedom of assembly guaranteed in Article 22 of the Covenant.

102. Espionage and Performance of Objectives (Article 4)

A. Some actions "under the instruction from an anti-State organization" are subject to punishment under this article. More than 50 types of actions are liable to capital punishment (Paragraph 1, Items 1 through 4) and the actions of "fabricating or disseminating false information that might cause social disorder are punishable with a minimum two years of imprisonment" (Paragraph 1, Item 6). The NSL allows death penalty a large number and types of actions. It is questionable whether this is consistent with Article 6, Paragraph 2 of the Covenant which stipulates that "sentence of death may be imposed only for the most serious crimes."

B. The most disputable issue is the crime of espionage. Under the former NSL which applies to actions prior to May 31, 1991, espionage or "detecting, collecting, divulging, transmitting and/or intermediating the state secrets" shall be punished with death penalty or life imprisonment. The new amended law differentiates the state secrets. The actions listed above are concerned with the following types of state secrets that shall be punished with death penalty or life imprisonment: "a military secret or state secret, which, in order to avoid grave damage to national security, are allowed to be known by only a limited number of people and are concerned with facts, and materials, or knowledge to be kept as secret from an anti-State organization." In case such crimes are concerned with military secrets or state secrets other than those mentioned above, death penalty, life imprisonment or imprisonment for no less than seven years may be imposed.

C. What should be noted is that the South Korean Courts interpret the "military secrets or state secrets" in the widest possible sense. The Supreme Court defined, not in good faith, the state secrets mentioned in the NSL to be "all information and intelligence material that is deemed necessary to keep secret from, or not confirmed to, an anti-State organization for the interest of the Republic of Korea. Therefore, state secrets refer to not only state secrets in the strict sense of the term, but also all secret matters in all fields of politics, economy, society, culture, etc. Furthermore, even though the information is evident and natural common-sense knowledge in the Republic of Korea, it shall be regarded as state secret in the NSL when it might provide benefit to an anti-State organization and cause damage to us" (Supreme Court decision, 90-Do-646 of June 8, 1990 in the Rev. Moon Ik-Hwan case). This is the established ruling of the Supreme Court from a long time ago.

For instance, Mr. Yoo Won-Ho, who had visited North Korea accompanying Rev. Moon Ik-Hwan, told Mr. Chung Kyung-Mo, whom he met in Tokyo, that the National Democratic Alliance (Chonminryun) - a dissident organization in south Korea formed in January 1989 - represented "the formation of an unified body consolidated after the formerly fractionalized dissident movement, with the main leadership stemming from the generation of people in their 40's, and that there was a real possibility of developing into a political party in the future." Even though Mr. Yoo was speaking of matters that had already been made public by newspaper reports in South Korea, the Court judged his action as an act of divulging a state secret and found him guilty of divulging state secrets.

D. The courts also construe other terms describing the punishable act in the widest possible sense. Among the types of actions punished by Article 4 of the NSL is an act of providing the anti-State organization with military benefits. Ms. Im Su-Kyung, who had participated in the 13th World Festival of Youth and Students held in Pyongyang in July, 1989, said during her stay in North Korea that, "the National Council of Representatives of Students (Chondaehyup) is composed of 19 regional bodies and special committees, its policies are determined by the representatives of the 19 regional bodies, and Chundaehyup has a capacity to mobilize some 30,000 students: Employment opportunities after graduation are limited, and students have difficulties paying their tuition fees: Students are endeavoring to establish a solidarity relationship with the people and are currently conducting a campaign to know North Korea better." The court judged her action as an act of providing North Korea with military benefits (Supreme Court decision 90-Do-1613 of September 25, 1990).

E. Since the court interprets the scope of national security too broadly, this article as interpreted by the court violates Article 19 of the Covenant which guarantees the freedom of expression and the right to know.

103. Escape and Infiltration (Article 6)

A. Anyone "infiltrating into the Republic of Korea from an area controlled by an anti-State organization, or escaping to such area, with the knowledge that it will endanger national or security or survival or the basic liberal democratic order" shall be punished with imprisonment for up to 10 years (Paragraph 1). However, the death

penalty may be imposed in cases where the escape or infiltration is deemed to have been committed to receive directives, or on the basis of directives from an anti-State organization (Paragraph 2).

B. The court has defined "escape" as going to North Korea from any area outside of North Korea, and "infiltration" as coming into South Korea from North Korea or any other areas outside South Korea. Furthermore, the courts not only construe the meaning of escape and infiltration as limited to the clandestine visitation or return through illegal means, but also applied to the open and lawful visitation or return. Therefore, Rev. Moon Ik-Hwan, Ms. Im Su-Kyung and Father Moon Kyu-Hyun, who returned to South Korea in world-wide public and media attention, via airplane or on foot across the South-North demarcation line in Panmunjom following press conferences, were convicted for "infiltration."

C. The court's interpretation of "directives from an anti-State organization," which is a precondition for a much heavier penalty (the death penalty may be imposed) for this charge as well as the charge of divulging state secrets, is also very broad in scope. For example, in the case of Ms. Im Su-Kyung, the letter of invitation issued by the North Korean Student Committee to the South Korean National Council of Representatives of Students (Chondaehyup) was adjudicated by the court as a "directive from an anti-State organization." However, the letter of invitation in question was addressed to Chundaehyup for the aforementioned World Festival and was actually first received by the South Korean Red Cross and then forwarded to Chundaehyup under the permission of the government (National Unification Board).

D. This article, which punishes simple movement between South and North Korea under the names of "infiltration" and "escape" violates Article 12, Paragraph 2 of the Covenant, which guarantees the freedom to leave any country including his own, and Article 12, Paragraph 4 of the Covenant, which guarantees the right not to be deprived of the right to enter his own country.

104. Praising, Encouraging, Etc. (Article 7)

A. Persons who have "benefitted an anti-State organization by way of praising, encouraging, propagating, or siding with the activities of an anti-State organization,

its members or the persons who have received directives from such organization, or through any other means" or who have "praised, encouraged, propagated or sided with the activities of an anti-State organization, its members or the persons who have received directives from such organization or have propagated or instigated the disruption of the State with the knowledge that it will endanger the national security or survival or the basic liberal democratic order" shall be punished with up to seven years of imprisonment (Paragraph 1).

B. Persons who have formed an organization for the purposes of conducting the activities listed in Paragraph 1 (enemy-benefiting organization), or who have joined such organization shall be punished with no less than one year of imprisonment (Paragraph 3).

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

D. Article 7 is the most often used article of the NSL. It is used as an instrument to restrict the freedom of thought, conscience, expression through speech, publication, art, association, etc. Under this article, anyone who supports or thinks positively of socialism, communism or North Korea is liable to be punished. Furthermore, there have been innumerable cases in which this article was applied to punish people who criticized government policies for the reason that such criticisms happened to be similar to those made by North Korea against South Korea. A great number of people have been imprisoned under this article for reading or publishing the writings of Karl Marx, Lenin, Trotsky, Kautsky, Mao Tse-tung, Rosa Luxembourg, Lukacs, Gramsci, Maurice Dobb, Leo Huberman, Ernest Mandel, E.H. Carr, Frantz Fanon, Paulo Freire, Samir Amin, Herbert Marcuse, Louise Rinzer, Bruce Cumings, all recognized works of social sciences in the West. Many books or essays on the history of the labour movements in the Soviet Union, China or even Western countries, the history of communism or socialism, the history of socialist revolutions, or on the situation, history, or philosophy of North Korea have been prohibited for publication, reading, or sales. The expressions denouncing the American policies as imperialist, asserting the withdrawal of the nuclear weapons or

U.S. troops, or supporting the unification through the creation of a federal system as opposed to the official unification policy of the South Korean government fall within the breadth of this article. Ms. Im Su-Kyung and Father Moon Kyu-Hyun were found guilty and punished, not only for their visit to North Korea, but also for all of their speeches and dialogues on the grounds that they were praises, encouragements or siding with North Korea.

E. As of the end of 1990 the number of books that were banned under the NSL was 376 and has been increasing ever since. Furthermore, many persons that have published, read, or sold said books have been punished under the NSL. And it is needless to say that imprisoned persons are not permitted to read said books. More surprising is the fact that government authorities have not made public the list of said banned books, thus it is impossible for the public to know which books they are not allowed to possess. Some examples of cases under Article 7 are shown below.

(1) Painter Hong Song-Dam, together with other fellow painters, made a series of paintings entitled "The History of the National Liberation Movement" depicting the events in the modern history of Korea. In one of the paintings, he painted a picture illustrating the killings of the citizens of Kwangju by martial law troops in May 1980. The court condemned the painting as an enemy-benefiting expression, thus he has been serving three years of imprisonment (Seoul High Court decision 90-No-1022 of June 1, 1990). In 1991, painters Chung Sun-Hee, Choi Ik-Kyun, Oh Jin-Hee, Cha Il-Hwan, Park Yong-Kyun, Lee Jin-Woo were also punished for making "enemy-benefiting expressions" in relation to the "The History of National Liberation Movement" series of paintings.

(2) Mr. Park Tae-Hoon, while staying in the U.S. for graduate studies, became a member of Young Koreans United (YKU). On his return to South Korea to comply with military service duties, he was arrested, indicted and found guilty of joining an enemy-benefiting organization at the trial of the first instance (Seoul Criminal District Court decision 89-Kohap-1221 of December 22, 1989). His case is still pending in the trial of the second instance (High Military Court 91-No-292). YKU is an association which was formed by Korean-American youth living in the US and working in accordance with the laws of the US, for the welfare of the Koreans living there and to support the democratic movement in South Korea. However, the prosecution, without any

detailed evidence, based only on the confession of Park Tae-Hoon, declared YKU was an organization working for the benefit of North Korea. Not surprisingly, the Court accepted this assertion and found him guilty. According to Park Tae-Hoon's confession, YKU believes that "Korea is subjugated to and dominated by the US: Therefore, Korea needs to be liberated from the US: The deprived basic rights of the South Korean people need to be restored and the US nuclear weapons stationed in South Korea should be withdrawn and the "Team Spirit" US-ROK Joint Military Exercises should be terminated. Furthermore, the military dictatorial regime must be overthrown."

(3) In June 1991, four researchers who were or had been members of the Seoul Social Science Institute were arrested for the alleged production of enemy-benefiting expressions. The Seoul Social Science Institute is an academic organization composed of some 70 professors of social sciences and post-graduate students from the Seoul National University. The main charges were: contribution of papers to the books titled "Theory, History and Reality of Socialism" (Shin Hyun-Joon), and "The Development of Capitalism in Korea" (Kwon Hyun-Jung), both of which are academic journals published by the Institute: presentation of a research paper entitled "Theoretical Structure of the Neo-Colonial Fascism" to the academic symposium entitled "The Korean Society during the 1980's and the Structure of Domination" organized by the Institute (Song Ju-Myung): and the contribution of an article entitled "An Understanding of The People's Democratic Revolution" (Lee Chang-Hwee) in an academic journal, "Reality and Science." All these people were engaged in research work as part of doctorate or masters degrees in political science or economics in the graduate school of the Seoul National University, and many of the so-called enemy-benefiting expressions charged in this case were theses for degrees approved by, or submitted to the graduate school of the Seoul National University. The investigation authority charged that the contents of these papers, which show socialist orientation of the authors, are identical with the propaganda made by North Korea against South Korea and thus gave benefit to North Korea. However, professors of the Seoul National University testified that all of the theses in question were strongly opposed to the leading ideology of North Korea, the Juche Thought, and produced on the foundation of thorough academic spirit and research. Despite the specialist opinion of the professors, the courts found them all guilty. (Lee Chang-Hwee, Song Ju-Myung: Ministry of Defense Ordinary Military Court 91-Ko-23, Ministry of Defense High Military Court 91-No-15: Shin Hyun-Joon: Seoul Criminal

District Court 91-Kodan-5555: Kwon Hyun-Jeung: Seoul Criminal District Court 91-Kodan-5554). This case shocked the whole society in that academic researches, including the theses for degrees produced by post-graduate students of an academic association from the Seoul National University, which has been regarded as the highest academic authority in South Korea, were charged and found guilty in spite of the testimonies of professors. Until this time, the prosecution under Article 7 of the NSL had been centered on commercial publications or expressions made by the anti-government activists. The shock of this case was greater because it took place at a time when the government was asserting that the possibility of infringement of human rights under the NSL was eliminated by the amendment of the NSL.

(4) Rev. Hong Keun-Su was arrested and sentenced to two years of imprisonment for having praised and having sided with North Korea during his sermons, and because he had pointed out some strong aspects of North Korea during a dialogue at a television program of the Korea Broadcasting System (Seoul High Court 91-No-3731). Theology Professor Park Soon-Kyung was found guilty of siding with North Korea for her lecture entitled "The Christian Church and the Prospect of National Unification" at a Christian symposium held in Tokyo, Japan. In the lecture, she called for a greater understanding of Juche Thought, the North Korean leading ideology, as part of the effort towards unification. She was also charged and found guilty of forming an enemy-benefiting organization for her involvement in the Preparatory Committee of the South Korean Headquarters of the Pan-Korean Alliance for National Reunification (Seoul Criminal District Court 91-Kohap-1547).

F. The Plenary Panel of the Supreme Court recently made a decision on Article 7 of the NSL, which shows that the Court has not changed the interpretation of the past at all (Supreme Court decision 90-Do-2033 of March 31, 1992). In this case were involved three expressed materials : (i) a book explaining the wage in the light of the theory of socialism, entitled "Fundamental Theory of Wage:" (ii) a book on labour movement, entitled "Daybreak No. 6:" and (iii) a printed matter criticizing the U.S.A., entitled "For whom is the U.S.A.?" The Supreme Court found that the materials contain aggressive and offensive expressions which threaten the security and liberal democracy of South Korea, and declared the accused who had possessed the materials guilty. The Supreme Court held that the "purpose" which is prescribed as a requirement for the crime in

Article 7, Paragraph 5 of the NSL should be considered to exist in the event that : (i) the accused is aware that the contents of the material in question objectively benefit the enemy by way of siding with the activities of North Korea, such as propaganda, agitation, and so forth; and (ii) the accused does, or willfully neglects to, recognize his act may benefit the enemy. It further held that if the accused acquired, possessed, manufactured or distributed the expressed material objectively benefiting the enemy as described in (i) above with knowledge of its enemy-benefiting character, he should be presumed to have, at least, willfully neglected to recognize that his act may benefit the enemy. The Supreme Court also held that, unless the accused proves that he has not had the purpose of benefiting the enemy, he should be considered to have had such purpose. According to the view of the Supreme Court, a person who has or reads materials with certain contents may, in most cases, be punished under Article 7, Paragraph 5 of the NSL.

105. Meeting or Communication (Article 8)

A. Actions of meeting, or establishing liaison with, through communication or any other means, a member of an anti-State organization or a person who has received directives from it "knowing that such contact might benefit the anti-State organization" or "knowing that it will endanger the national security or survival or the basic liberal democratic order" shall be punished with imprisonment for up to 10 years.

B. The courts construe the "person who has received directives from an anti-State organization" very widely and have found such a person without any substantial evidence. For example, in the case of Ms. Im Su-Kyung, the court acknowledged Rev. Chung Ki-Yul who lives in the U.S. as such a "person who has received directives from North Korea." However, the court failed to clarify when, where, how and from whom Rev. Chung received directives and what the contents of the directives were. Rev. Chung was responsible for the organizing of the International Peace March held in Pyongyang in 1989. The Court asserted the fact that this march could only be held with the cooperation of North Korean authority was the basis for declaring him a person who received directives from North Korea.

C. The court has, without sufficient evidence, defined several overseas Korean associations or individuals as anti-State organizations or persons who have received

directives from North Korea, and has punished people who have come into contact with them. In most cases, such allegations are based on the fact that said organizations or individuals have been critical of the South Korean government or have made some favorable comments about North Korea, or on consular reports from overseas South Korean embassies. Such consular reports are made by officers stationed at the embassy who are believed to be officers of the Agency for National Security Planning and contain their assertions that, based on the monitoring of the actions of various organizations and individuals, they conducted speeches and actions which were seen as "siding with" North Korea. These reports have been accepted as evidence by the courts without giving the accused and their defense attorneys opportunity to test the validity of the claims in the reports. The following are some examples of persons and organizations that the courts have deemed to be under the directives of North Korea.

(1) Mr. Chung Kyung-Mo: related to the Rev. Moon Ik-Hwan case, resident of Japan, writer, facilitated Rev. Moon's visit to North Korea.

(2) Rev. Chung Ki-Yul: related to the Ms. Im Su-Kyung case, resident of the U.S., Christian minister, organized the International Peace March held in North Korea during Ms. Im's visit.

(3) Rev. Sung Nak-Young: related to the cases of Mr. Hong Sung-Dam and Mr. Suh Kyung-Won (former member of the National Assembly), resident of the U.S., Christian minister, involved with the European Alliance for Democracy in Korea (Minhyop) and has reportedly made speeches supporting North Korea.

(4) European Alliance for Democracy in Korea: related to the Mr. Hong Sung-Dam and Mr. Kim Hyun-Jang cases, association of Koreans living in Germany and other European countries, defined as an anti-State organization based on a consular report.

D. Due to this article, which prohibits meeting and communication with a certain category of people, including not only North Korean people but also certain other people inside or outside South Korea, Article 19, Paragraph 2 of the Covenant which guarantees the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, is not enforced satisfactorily in Korea.

106. Failure to Inform (Article 10)

A. Any person who has failed to inform an investigative or intelligence agency

despite the knowledge of other particular person's committing a crime under the NSL shall be subject to imprisonment for up to five years and/or fines. The amended law slightly reduces the range of the application of this article and specifies that the penalty can be reduced or exempted in case the person in question is a family member or a relative of the original criminal.

B. This article violates the freedom of conscience., i.e., the freedom to be silent, guaranteed in Article 18 of the Covenant.

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

107. In South Korea, a suspect, once arrested with a warrant of arrest, may be held by investigative authorities for 30 days. In addition to this period, Article 19 of the NSL allows the police and the prosecutor to each extend the detention of a suspect for 10 more days, to make the whole pre-trial period of detention up to 50 days. The police herein mentioned includes the National Security Planning Agency and the Military Intelligency Command (Kimusa).

108. As explained in Paragraphs 191 - 203, suspects are commonly forced to confess under torture or other mistreatment during interrogation. Thus, it is almost impossible for the suspects under the NSL to resist confession since they have to withstand 50 days of arduous interrogation and mistreatment within a most repressive atmosphere. The position of the detained is made even more difficult in that the court, in the cases of the NSL, almost never orders the release of the detained on the ground of illegality in the process of arrest, investigation or interrogation, and that their contact with or access to families or defense attorneys are often restricted.

109. On April 14, 1992, the Constitution Court made a decision that additionally extending the duration of detention for the crimes detailed in Articles 7 and 10 of the NSL violates the Constitution, and the detention must cease in 30 days. The Constitution Court decided that if other crimes under the NSL are involved, then the duration of detention can be extended to 50 days (90-Hun Ma-82). However, this extension of 20 days more than in general criminal cases appears to violate the principle of equality prescribed in Article 26 of the Covenant. The admissibility of the additional extension is believed to further violate Article 14, Paragraphs 2 and

3(g) of the Covenant in that the additional period may be utilized by the investigative agencies to force the suspect to be presumed innocent to confess guilty.

Double Standards in the Application of the NSL

110. As pointed out in the government report, the existence of the NSL has been justified on the grounds of the "special situation of the divided nation" and/or the supposed danger of "the North's aggression." However, as shown in the aforementioned cases, this law has been criticized as being used not so much to prevent North Korean aggression but as a retaliatory instrument against anti-government activities. The courts, in abusing their powers, have been suspected of violating the very human rights which should be enjoyed in a democratic society, instead of limiting the breadth and application of the NSL by interpreting the law in good faith.

111. The NSL has been criticized as violating the principle of legality [*nullum crimen nulla poena sine lege*] due to the very vague and abstract articles in its essence as well as in its application. The Constitution Court, which is empowered to decide the constitutionality of a law pointed out the unconstitutionality of the NSL but at the same time, as referred to in the government report, reached a contradictory conclusion by declaring that article 7 of the NSL is constitutional on the basis of the supposedly "dangerous" situation as a consequence of the politics of division in the Korean peninsula. Thus, the Constitution Court's decision has no restricting effect in the application of the NSL.

112. The improvements in the relationship between South and North Korea, coupled with the changes in the international political environment, have resulted in exchanges and visits in many fields, including economy, culture and sports. All these, if the NSL had been applied with any impartiality, are subject to punishment. Thus the government, in order to justify the various government initiated and sponsored exchanges and visits, has enacted a new law titled the "Law Concerning the Exchanges and Cooperation between the South and the North" (Law No. 4239 of August 1, 1990, as last amended by Law No. 4268 of December 27, 1990) as a special law in relation to the NSL. According to this law, visits or other contacts with North Korea are permitted with a prior permission from the Minister of the National Unification Board. Since its enactment, many exchanges and visits have taken place on the basis of this law. However, in the case of

the people who seem to be in conflict with the government, they are still subject to punishment under the NSL for their contacts or preparations to contact North Korea. Not surprisingly, this has raised the question of double standards in the application of the laws. A recent example is the case of Rev. Moon Sun-Myung, the chief of the Unification Church ("Moonies"). Rev. Moon visited North Korea with his attendants without prior permission from nor post notification to the government. However, the government has not undertaken any measures against him. In comparison with the harsh punishment received by Rev. Moon Ik-Hwan, the double standards in the application of the law become evident.

113. The NSL arguably violates both the Charter of the United Nations and the recently ratified South-North Agreement. The South Korean government, in its outward pronouncements, recognizes North Korea as an independent state and a partner in the course toward unification. However, domestically, the government continues to demand that the people perceive North Korea as an "unlawfully organized anti-State organization."

114. The NSL is also in contradiction with the policies of the government. Indeed, the government decided a few years ago to make public informational materials and other documents about North Korea and other Communist countries. Following to this policy, the government has established several "Information and Resource Center on North Korea and the Communist Bloc" in Seoul and many other major cities throughout the country. In these centers people are permitted to read the original versions of various books, newspapers, and magazines published in North Korea and other Communist countries, and also to watch North Korean movies. In contradiction, those who purchase the same books or materials in bookstores are liable to punishment under the NSL. Furthermore, the two major television networks, KBS and MBC, have for a number of years been running weekly programmes showing North Korean produced television programmes and movies. However, university students who show the same or similar kinds of North Korean movies in campuses are now being subject to arrest and imprisonment in accordance with the NSL.

Statistics of the Cases under the NSL

115. Cases of Indictment for Violation of the NSL since 1980

crime \ year	80	81	82	83	84	85	86	87	88	89	90	91
NSL	23	169	171	153	93	176	318	432	104	312	414	265
ACL	136	65	13	-	3	2	5	-	-	-	-	-
AAD	3	155	130	283	249	540	1245	714	506	413	413	364

*sources: Court Administration Office, Yearbook of the Courts in 1990, p.497: Supreme Court, Materials submitted to the National Assembly for Inspection in the 156th Session (September 1991), pp.440 - 450.

**Number of cases in 1991 are those of the period between January 1 through August 31.

***ACL: Anti-Communist Law (repealed on December 31, 1980).

****AAD: Act Concerning Assembly and Demonstration.

116. According to the materials produced by the Supreme Court, arrest, detention and trials under the NSL in 1990 and 1991 (January to August) are as follows:

Yr\Ctgry	* 1	* 2	* 3	* 4	* 5	* 6	* 7	* 8
1990	514	9	98.2 %	49	11	380	1	99.74%
1991	289	0	100 %	23	2	309	2	99.3 %

*1: application by the prosecution for warrant of arrest. *2: rejection by a judge of the application for warrant of arrest.

*3: rate of issuance of warrant of arrest. *4: application for bail.

*5: acceptance of bail. *6: number of the accused who received trial.

*7: number of the accused found innocent. *8: rate of the accused found guilty.

117. The number of the suspects interrogated by the prosecutors from September 1989 to August 1990, and from September 1990 to August 1991 are in total 759 and 724

respectively. The categories of the crimes are as follows:

Yr\Ctgry	Expressions	P. E. SW.	Organizations	EPNG	0
89-90 (759)	418	173	136	9	23
90-91 (724)	324	128	234	2	36

*sources: materials submitted by the Public Prosecutors' Office to the National Assembly in 1990 and 1991.

**Expressions: enemy-benefiting expressions.

***P.E.SW.: praise, encouragement or siding with an anti-State organization.

****Organizations: enemy-benefiting organizations.

****EPNG: espionage

*****0: others

118. During the month of October 1990, among 41 applications for warrants of search and seizure to ban the showing of North Korean movies in campuses and other places, the courts issued 40 warrants. The following is the list of universities and other places which were subjected to search and seizure by investigative agencies:

Korea University, Choong-ang University, Soong-shil University, Dankuk University, Dongkuk University, Seoul National University, Kukmin University, Kukje University, Hansung University, Sung-Kyun-Kwan University, KunKuk University, Hanyang University, Se-jong University, Kyung-hee University, Seoul City University, Hankun Foreign Languages University, Duksung Women's University, Seoul Women's University, Yonsei University, Hong-Ik University, Sogang University, Myung-ji University, Yong-In Campus of Hankuk Foreign Languages University, Kyungbuk University, Choongnam University, Hannam University, Soon-cheun University, Yosu Maritime University, Mokpo University, Chunju University, and Masan Catholic Women's Center.

As mentioned above, many of the films seized by the warrants include those that

have been shown publicly in the Information and Resource Center on North Korea and the Communist Bloc established by the National Unification Board.

119. According to the statistics filed by the "Council of Families for Democratic Movement" (Mingahyup), which is composed of the families of political prisoners, the number of people currently arrested and detained for the violation of the NSL, as of September 9 of 1991, is 539. The number in prison for violation of the Act concerning Assembly and Demonstration (Law No. 4095 of March 29, 1989 as last amended by Law No. 4408 of November 30, 1991) is 218. The number of people in prison for the violation of the NSL and the Act concerning Assembly and Demonstration as of June 1990, one month before the Covenant came into effect on South Korea (July 1990) was 398 and 172, respectively. It thus becomes obvious that the number of political prisoners has steadily increased even after the ratification of the Covenant by the South Korean government.

Freedom of Thought and Conscience - Article 18

120. In South Korea there are various laws and legal practices which violate the freedom of thought and conscience, the freedom to express thought and conscience, and the freedom from coercion on thought and conscience. As Paragraph 229 of the government report points out somewhat vaguely, the South Korean Constitution does not guarantee the freedom of thought. In reality, the freedom of thought is not guaranteed in the case of people who oppose capitalism, or support socialism or communism. The freedom to express thought is infringed by the laws and court decisions that construe the causes justifying limitations of the freedom prescribed in Article 18, Paragraph 3 of the Covenant, very widely.

121. As discussed above, the National Security Law (NSL) encroaches on the freedom of thought and conscience in that it punishes people who have expressed support for socialism, communism or North Korea, and people who have failed to inform of a transgression of the law.

122. The Ministry of Justice maintains a system of "discriminatory treatment" and of "conversion of conviction." Under this practice, people imprisoned for the violation

of the NSL are treated as "communists," and are deprived of all benefits stipulated in the Penal Administration Law (Law No. 105 of March 2, 1950 as last amended by Law No. 2437 of January 15, 1973) unless they submit a signed statement of conversion of conviction declaring the abandonment of one's previously held beliefs and thoughts (i.e.,communism). Furthermore, according to the testimony of long term prisoners who have been detained for the violation of the NSL, the process of pressuring people to obtain a statement of conversion of conviction is often accompanied by torture and other kinds of cruel treatment. The system of "conversion of conviction" is viewed as a gross violation of the freedom of thought and conscience.

Security Observation Law

123. In addition to the NSL, which punishes people for their thought and conscience, and the system of "conversion of conviction", which violates the freedom of thought and conscience of the people who are being so punished, the Security Observation Law (Law No. 4132 of June 16, 1989 as last amended by Law NO. 4396 of November 22, 1991) violates the freedom of thought and conscience of the people who have been released after they were imprisoned under the NSL, etc.

124. The Security Observation Law was introduced as an amended version of the notorious Social Safety Law (Law No. 2769 of July 16, 1975 as last amended by Law No. 3318 of December 31, 1980). The Social Safety Law allowed the Minister of Justice the power to detain people who had been released after being imprisoned under the NSL, etc., and who were arbitrarily considered to have a high propensity to commit a repeat crime or who did not have a permanent residence, in a prison named "Security Protective Custody Institution" for a period of up to two years. Such a period was renewable indefinitely by the Minister(Article 6). Although the Security Observation Law lacks the provisions for "protective custody" and "residence restriction" provided in the Social Safety Law, it continues to allow the systematic violation of released prisoners' basic rights by the provision of "security observation."

125. Of the people who have been imprisoned for the violation of Article 4 (performance of objectives), Article 5 (voluntary support and receiving of money or other materials), Article 6 (escape and infiltration), or Article 9 (providing help) of the NSL, and certain other national security related laws, those who are recognized to "require

observation to prevent the repeat of crimes because there are sufficient grounds to believe there is the danger of repeating similar crimes" can be placed under security observation for two years (Article 4 of the Security Observation Law). The decision to impose security observation is made by the Minister of Justice on resolution of the Security Observation Review Committee, upon the request of a public prosecutor. The period of observation can be extended for two years, without limit on the number of such extensions, through the same procedures (Articles 5, 7 and 10 to 15).

126. A person who has been punished under the NSL can be exempted from security observation, if he, in the eyes of the Minister of Justice, has an established law-abiding attitude, has permanent residence and employment, and has two personal guarantors of character (Article 11). Moreover, he must submit "an oath promising obedience to the laws" (Article 14, Paragraph 1 of the Enforcement Decree of the Security Observation Law). A person under "security observation" must report, within seven days, to the chief of the appropriate police station, various personal information including "information about relatives and friends, about the status of one's own and family's property, about religion and membership in organizations, and about work and emergency contact addresses" (Article 18, Paragraph 1 of the Security Observation Law). Moreover, a person under security observation must make regular trimonthly reports, containing information on "major activities, names of other people under security observation met or communicated with and the date, time, place, and content of such meetings or communications, any travel in the past three months, and other matters the chief of the police station has instructed the person to report" (Article 18, Paragraph 2). Prior notice must be given whenever changing residences, or staying away from the permanent residence for more than ten days (Article 18, Paragraph 4). Public prosecutors and the officers of other investigative agencies must observe the "environment and activities of the subject, should appropriately instruct the subject after the reports have been reviewed, and may educate him as needed to rehabilitate him to become a law abiding citizen (Article 19, Paragraph 1). Finally, a public prosecutor or an officer of other investigative agencies may prohibit the subject from meeting or communicating with other persons under security observation, or from attending an assembly or demonstration, and may instruct him to appear at a specified place (Article 19, Paragraph 2).

127. A person under security observation, who takes refuge or escapes to avoid it, may be imprisoned up to three years (Article 27, Paragraph 1). He may also be fined or imprisoned for up to two years for failing to make the above specified reports, for making false reports, or for failing to give notice of travel destination or change of residence. He may also be fined or imprisoned for up to one year for violating the "instruction" measures as specified in Article 19, Paragraph 2 (Article 27, Paragraph 3).

128. The Security Observation Law subjects a person who has already fulfilled his sentence to administrative measures imposing the reporting requirements contrary to conscience, and infringing on the freedom to determine and move the residence, the right to privacy including the right to associate or communicate, and the rights of the family and friends. The law is in violation of Articles 12, 17 and 18 of the Covenant.

129. Mr. Suh Joon-Shik and his brother, Mr. Suh Sung, both of whom were Koreans born in Japan and were students of the Seoul National University, were imprisoned for espionage after they had visited North Korea. Mr. Suh Joon-Shik, upon completion of his seven year sentence, was detained in "protective custody" for 10 years because he refused to submit a statement of conversion of conviction. Following his release in 1989 he was subjected to security observation under the Security Observation Law. Because he failed to make regular reports he was arrested, indicted and found guilty of violating the Security Observation Law by the Seoul Criminal District Court in 1991 (Seoul Criminal District Court decision 91-Kodan-519).

130. Under the Security Observation Law, like under the Social Safety Law, a person subjected to security observation may undertake an administrative litigation. However, the precedents of the Supreme Court concerning the security protective custody provided in the Social Safety Law might show that in reality such an administrative litigation would be useless. The Supreme Court, responding to an appeal on the legality of security protective custody, found that the detention was legitimate, in view of the subject's personal history and criminal record and the following circumstances: the subject believes in the superiority of socialism or communism ; he expressed complaints about the Social Safety law ; he undertook hunger strikes and other disturbances in violation of prison regulations (Supreme Court decision 85-Nu-343 of November 26, 1985).

In another case, the court declared that the decision to place under security protective custody was legitimate because the subject, even after a two-year detention, did not repent nor change his convictions (Supreme Court decision 85-Nu-28 of December 24, 1985). In view of the above, it is unlikely that an administrative litigation will be of any use unless there is a fundamental change in the attitude of the courts in their interpretation of the abstract terminology that are grounds for security observation. Furthermore, an administrative litigation imposes a great financial burden and takes substantial time. If the two-year period of security observation ends pending litigation, the courts will dismiss the case on the grounds that the measure in question has lapsed.

Religious Education for Students

131. The education system in South Korea is composed of Elementary School, Middle School, High School and College or University. The schools are divided into national schools operated by the national government, public schools operated by local governments, and private schools run by private organizations. Some of private schools are run by religious foundations of the Protestant church, Catholic church, Buddhists, etc., and include subjects on the respective religion as part of the formal curriculum. Students can not choose which Elementary, Middle or High School they can attend, neither do the schools have the right to select students. Placement is decided according to the area of residence. Therefore, students are forced to attend the school designated by the government. Because of this, children of a family practicing one religion may be forced to attend, study, and practice another religion. This system violates the liberty of parents to ensure the freedom to receive religious and moral education of their children in conformity with their conviction.

Freedom of Expression - Articles 19, 25 (b)

132. In South Korea, freedom of expression is seriously infringed upon. Freedom of expression, as the government report notes (Para. 238ff), is formally guaranteed by the Constitution and relevant laws. However, in reality, it has been violated by various laws which are contrary to the Covenant, or by Court decisions based on arbitrary interpretations of broadly constructed laws, or by coercive exercise of police powers of the government which are not grounded on any laws.