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

Number of Torture Cases Filed by Victims

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

(National Inspection Report 1997 & 98)

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

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

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

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

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

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

Torture Conducted in Ordinary Criminal Cases

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

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

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

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

Humane Treatment of Inmates

<Article 10>

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

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

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

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

72. The poor medical facility and the lack of qualified medical personnel pose serious problems. Inmates have difficulty in seeking a doctor even during an illness. It is especially difficult for inmates to obtain proper treatment having to do with specialized medical fields such as dental problems and gynecological illness. According to the parliamentary inspection in 1997, there are only 60 doctors in 39 facilities throughout the country, which means that each is responsible for 1035 inmates. Taking into account that the poor condition in the facilities increases the chances of illness, the small number of doctors is a serious problem. To make matters worse, the reality is that doctors in prisons are working only during the day, while unqualified prison officials take charge of their responsibilities at night.

Ko Soon Ae, an inmate 8 months into her pregnancy, asked for medical treatment when she felt unusual symptoms. But she was only once allowed a medical examination. She was released from prison four days before she gave birth to a baby who was already dead.

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

permitted.

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

Contact with the Outside World

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

Abuse of the Disciplinary Power and Harsh Treatment toward Inmates

76. The 1995 amendment brought slight progress in the area of discipline for inmates. It prohibited the reduction of diet as a disciplinary measure, criticized as inhuman treatment. However, there seems to be little progress in practice: in some cases inmates were unduly disciplined just because they protested against unjust treatment or reported complaints on prison conditions to the superintendent.

For instance October 23, 1997, an inmate of the Jeonjoo prison, was given solitary confinement for 51 days with his arms, wrists, ankles, and waist tied with handcuffs and chains, for the sole reason that he looked at the eyes of the superintendent and protested

against the informal manner in which he had addressed him.

77. Instruments of restraint, such as handcuffs and ropes that should not be used for discipline are frequently used. Some inmates are put into dark cells where all the windows are covered with acryl. During disciplinary procedure, guards often physically abuse inmates, a practice which is totally ignored by superior officials. This practice is the same as keeping corporal punishment, which is in violation of both international human rights law and national law.
On Jan. 20, 1998, the Supreme Court ruled in favor of compensation for a former inmate who had been disciplined while tied by handcuffs and ropes. But even after the decision, instruments of restraint are still applied as tools for discipline.
On February18, 1998, an inmate who had been sentenced to fine but put in prison because due to failure to pay the fine, died during work. The result of the autopsy showed three broken ribs and brain hemorrhage. There was strong suspicion that he has beaten by either guards or other inmates.
In July 1997, a guard of the Kwangju prison beat a juvenile inmate, Suh, with a stick. While he was under interrogation, he was kept in a solitary cell with his hands bound with handcuffs for one month. After he was moved to a juvenile facility, he suffered such inhumane treatment as having his foot burned with a lighter by a drunken guard. A former inmate who was released on July 25, 1998, disclosed that he was beaten by guards while in the "putting binyo" position, a wooden stick forced between bound arms and legs. He was kept with his hands handcuffed in a dark cell for two months. Even after the disciplinary measure, he was forced to stay handcuffed for six months.

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

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

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

Right to Privacy

<Article 17>

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

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

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

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

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

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

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

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

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

Introduction of New Control Method – the Electronic ID Card

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

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

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

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

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

The Limit of the Law for the Protection of Private Information Held by Public Institutions

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

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

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

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

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

Discrimination against Women

<Article 3 and Article 26>

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

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

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

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

96. The average period of continuous employment for Korean women is 3.8 years, half that of Korean men, because Korean women tend to quit working while they raise their children. In 1995, the average wage for women was 52.5% of that of men, showing huge wage disparities according to the Korean Office of Statistics. The number of women working as high rank officers, professional or administrative personnel is excessively disproportionate. The fact that women comprised only 8.6% of all new employees with university qualification of the 50 biggest Korean companies, and 1.2% of public corporations in 1994, shows most women workers are allotted low pay, low skill jobs. When Korean women find jobs after raising their children, most job offers seem to be restricted to simple tasks in manufacturing, wholesale and retail industries, and the individual service sector in which their previous careers and/or working experiences are unlikely to be recognized. As many as 62.7% of women, working in very small companies with four employees or less where the Labor Standard Law does not apply, cannot enjoy their parental leaves. Women workers accounting for 64.9% of the total part-timers in 1993 represents their poor working conditions and employment insecurity.

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

women, the Korea government implements policies mainly to assist unemployed male workers. Thus, Korean women desperately need equivalent unemployment measures at national level.

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

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

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

not.

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

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

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

sexuality.

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

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

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

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

107. In 1994, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan filed a claim with the local court of Tokyo demanding punishment of those responsible for the abuse of Comfort women by the Japanese military, based on international law. This case was rejected for the reason that the statute of limitation under Japanese domestic laws had been exhausted; that the accused were not clearly identified; and that the war crime was not clear or detailed. Yet, the Japanese government decided to provide nominal consolation payment to victims from the Asian Peace and Friendship Fund, raised through private contributions rather than state funds. In January 1997, the Japanese government announced that it had agreed to privately deliver the payments to 7 victims. The Korean government also decided to provide financial support to victims but failed to make any official request to the Japanese government for compensation. On April 27, 1998, the Shimonoseki branch of the Yamaguchi local court ruled that the Japanese government should pay 900,000 Yen (around US$7,500) to the 10 Korean women who had served as forced laborers and/or military comfort women during World War II.

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

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

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

Juvenile Delinquency

<Article 10 and Article 14>

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

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

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

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

Right of Child and Family

<Article 23, Article 24>

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

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

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

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

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

117. According to statistics in 1993, about 700,000 or 800,000 students in primary schools and 450,000 in kindergartens were children of working mothers. The government announced its working plan for protection facilities for children after school, effective from 1996. It would provide 2,000 new centers for protecting children after school in which 72,000 children would be protected. However, the scheme has not yet been implemented. In addition, the number of undernourished children and children who are actual heads of their families have been growing every year. The government gives 1,500 Won (1,000 Won for a small cup of coke at Macdonald of Korea) per lunch for students who cannot afford their lunch, and provides 80,000 Won(around US$67) a month as additions to the living costs of children who head their families, but these amounts are insufficient in providing for basic needs.

118. Adoptions are very rare, and most of them are secretly done as Korean society puts great significance on blood relations. In particular, only 0.12% of handicapped children are adopted in Korea. Meanwhile, to promote the adoption of handicapped children, the government provides 100,000 Won(around US$84) a month as general aid and 200,000 Won(around US$170) a year for their medical expenses. However, these amounts are too low.

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

200. The patrilineal family system, mentioned in our earlier report, is abolished and a bi-lineal family system has been adopted instead. Therefore, children can be Korean

nationals if one parent is Korean. The abolishment of the discriminatory Nationality Act in which the citizenship of the father took precedence in determining children's nationalities, contributes to the advancement of equality between genders in Korea.

PART IV

Freedom of Conscience and Thought

<Article 18>

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

Conversion System or Law-abiding Oath System

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

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

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

Security Observation Law

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

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

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

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

Freedom of Expression

<Article 19>

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

The Censorship of Film and Video

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

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

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

(1) films have the potential to disturb the fundamental democratic order and would damage national dignity

(2) they excessively express violence and obscenity which is considered an offense against public decency

(3) they have the possibility of affecting national interest by disregarding diplomatic relationships with other countries and Korean cultural identity.

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

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

National Security Law

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

212. The government report refers to the National Security Law in relation to the Article 19 of the Covenant. However, it does not justify the human rights infringement situation created by the NSL. The report says that during the seventh revision on 31 May 1991, a declaratory clause was inserted to provide that "construction and application of the NSL shall remain at the minimal level, and shall not extend the interpretation or wrongfully restrict fundamental human rights of citizens guaranteed under the Constitution." (Article1. Paragraph2) Also, provisions likely to induce the violation of human rights were fully reviewed. But only abstract clauses such as "knowing it endangers the national existence, security of liberal democratic basic order" were occasionally added. The clause is so vague that it cannot actually affect the application of the NSL. It is no

more than a useless embellishment. The following statistics are clearly showing, even after the revision of the NSL, there have been too many detentions and punishments.

213. The number of arrested NSL violators

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

* source from MINKAHYUP Human Rights Group

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

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

*Source: Ministry of Court Administration <Supreme Court's Yearly Report> 1980 - 1997

*Anti-Communist Law was abolished on 30 December 1980. The number of indictment is the cases to which previous Anti Communist Law was applied.

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

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

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

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

the NSL and consider other means. In spite of all the above recommendations, the government has not taken any action on the NSL.

Examples of the Cases Applied by the NSL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Escape, Infiltration(Article 6 of the NSL)

226. Article 6 of the NSL states that anyone infiltrating into the Republic of Korea from an area controlled by an anti-state organization, or escaping to such an area, with the knowledge that it will endanger national security or the basic liberal democratic order, shall be punished with imprisonment for up to 10 years (Paragraph 1). This includes cases where the escape or infiltration is committed to receive orders, or is based on

orders from an anti-state organization. (Paragraph 2)

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

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

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

his arrest and indictment were based on an unreasonably broad application of infiltration, escape crimes in the NSL. In fact, at the head of the speech he made at the Festival, Moon mentioned the necessity for unification and criticized the leaders of both North and South governments who did not put the public's desire for unification as a national priority.

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

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

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

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

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

234. The government report explains that the NSL does not infringe on the freedom of expression. It states that the purpose of Article 7 of the NSL is not intended for punishment of those who study or simply express communism or "Juche" ideology.

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

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

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

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

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

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

organization in the past. Due to political pressures demanding the revision of old practices as well as the reduction of number in civil servants, investigators working at public security agencies are competing to prove that they have been active,

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

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

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

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

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

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

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

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

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

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

248. Ha Yong-jun, presently a senior at Hanyang University, summarized some parts from legally produced books, "Race and Class" by Alex Callinicos and "Insane

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

249. The improper application of the NSL is happening in the arts as well. The police arrested Suh Joon-sik, Representative of Sarangbang for Human Rights Movements, a member of the executive committee of the Second Human Rights Movie Festival, on the charge of violating Article 7 of NSL. He was also prosecuted on November 28. Among the reasons he was indicted was that he showed a movie, "Red Hunt" during the Festival. The movie is about events in Cheju Island in the 1940s in which people were victimized as a result of political conflict between the left and the right. But "Red Hunt" was once sent to the Second Pusan International Film Festival and showed to many people including the presidential candidates Kim Dae-joong and Lee Hoi-chang. It was previously inspected for the show in the Festival. The criticism is that it is absurd to apply the regulations about keeping, distributing enemy-benefiting material when the movie had already been publicly inspected and played and shown to many people.

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

251. When investigators cannot find any evidence while investigating a suspect for

organizing or joining an enemy-benefiting organization, they simply apply the enemy-benefiting material related regulation. But the court that is responsible for stopping this absurd investigation practice and protecting the freedom of expression does not sufficiently carry out its role.

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

253. The Seoul District Court that examined this case declared Park to be innocent on

the suspicion of studying "Juche" thought. Also concerning the distribution of materials, the court declared him innocent for there was no enemy-benefiting content. But a prosecutor appealed the decision and this case is pending in the second trial.

Meeting or Communication(Article 8 of the NSL)

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

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

Failure to Inform(Article 10 of the NSL)

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

257. The Seoul District Police Agency urgently arrested an executive member of the

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

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

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

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

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

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

Freedom of Peaceful Assembly

<Article 21>

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

The justifications for banning the assembly are:

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

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

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

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

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

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

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

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

269. On March 22, 1997, a group of students held an assembly to protest the government's suppression that caused the death of a student, Yoo Jaeul. Around 500 students tried to hold a rally on the street. The police sprayed tear gas in the students' face. In addition, to make matters worse, the police hit students with an iron club, iron chains and clubs with ends tied to iron. As a result, around 20 students were hurt and hospitalized. The police admitted using those tools and announced that would do away with them.

On March 28, 1997, students scheduled to hold an assembly to protest the government's policy concerning Seoul National University. 700 Students tried to hold a rally out of the school, but riot police threw stones at the students. During the encounter between students and police, 19 year-old Nam yoon-kuk of Seoul National University was

injured. On March 28, 1997, students held an assembly in Chosun University and the police directly hit a 21-year-old student, Park Min-seo of Chunnam University. As a result, he was seriously ill from cerebral hemorrhage.

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

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

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

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

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

275. On August 8 1996, human rights NGOs including Minbyun held a rally to set free

political prisoners. 200 riot police stopped them. The rally had been approved by the police, but the police stopped the rally as soon as the rally move on to the streets. The police said that the blue shirts and ropes representing prisoners' garments were not reported as material used in the rally.

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

PART V

Recommended Questions to the Government of the Republic of Korea

Relation between the Covenant and Domestic Laws

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

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

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

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

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

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

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

Right to Fair Trial

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

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

Right to a Defense Counsel

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

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

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

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

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

(C) Is such denial legally valid?

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

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

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

(B) If not, why?

Right to Life

7. According to the NGO's report, the death penalty is prescribed in 15 provisions for the Criminal Code, 45 provisions for the Military Criminal Code and more than 50 acts for the National Security Law. Article 93 of the Criminal Code and 13 provisions of the

Military Criminal Code prescribe the death penalty without any alternatives.

(A) Is this true?

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

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

Prohibition of Torture

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

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

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

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

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

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

(F) What are the reasons for impunity?

Right to Liberty

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

(A) Can this period be considered reasonable?

(B) Any plans to reduce this period?

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

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

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

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

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

Humane Treatment of Inmates

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

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

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

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

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

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

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

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

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

Right to Privacy

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

(A) Is this true?

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

Discrimination against Women

15. According to the NGO's report, Korean women are discriminated against in the work place, being laid-off in large numbers since 1997 due to the Korean economic crisis and IMF bail-out. Discriminatory labor practice against woman such as forced retirement, forced voluntary retirement and selective dismissal of woman are prevalent on the grounds that men are breadwinners.

(A) Is this allegation true?

(B) If true, what has the government done to prevent this discriminatory labor practice in the work place?

Freedom of Conscience, Thought and Expression

16. According to the NGO's report, the situation in relation to the National Security Law remains unchanged even after the installation of the civilian government.(please refer to para.212-213)

(A) How many people have been charged/ prosecuted/ punished for the violation of NSL since the government's initial report was reviewed by the Committee?

(B) If unchanged, what's the reason?

(C) What's the official position of the government for NSL? Revision or abolition?

17. Korean courts are known to broadly interpret 'state secrets' prescribed by the NSL. Even public knowledge, which has already been disseminated through newspaper or other media, would still be considered a state secret if it might be useful information for North Korea or other anti-state organizations.

(A) Is this allegation true?

(B) If so, does this practice comply with Article 19 of the Covenant? Does it not excessively restrict the Covenant's provision on the right of expression?

18. The NGO's report states that the government still compels NSL offenders to convert their thought through the newly revised conversion system, "law-abiding oath system". It is argued that this system is totally different from the previous conversion system.(please refer to para.202-203)

(A) Is this law-abiding oath a precondition for the parole of NSL offenders?

(B) If so, what is the real difference between the previous conversion system and the present one?

(C) Any plans to abolish this system?

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

(A) How can this regulation be complied with the rights provided in the Covenant?

(B) Any plan either to abolish or revise this system?

20. Joon-Sik Seo was charged with Article 7 of the NSL because he presented a movie named 'Red Hunter' to the public. However, according to the NGO's report, the movie had already been presented to the public in an international film festival held in Korea, without any problems.(please refer to para.249)

(A) What is the reason why Mr. Suh was charged even though the movie had already been presented at the festival?

(B) It has been pointed out through individual communication cases acting under the Optional Protocol that Article 7 of NSL is in violation of Article 19 of the Covenant. What is the official position of the government for that provision? Abolition or revision?

HUMAN RIGHTS COMMITTEE

67TH Session

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CONSIDERATION OF THE 2ND PERIODIC REPORT OF THE REPUBLIC OF KOREA

Selected Human Rights Issues in Korea that should be considered in the 67th Session of the Human Rights Committee : Recommended Questions to the Government of the Republic of Korea and Suggested Recommendations for the Concluding Observation of the Committee

Presented by Lawyers for a Democratic Society, with the support of the International Federation of Human Rights(FIDH)

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Introduction

We, Lawyers for a Democratic Society, have submitted to the Human Rights Committee a counter-report to the 2nd periodic report of the Republic of Korea under Article 40 of the International Covenant on Civil and Political Rights. In that report we tried to articulate all problems of the government report and provide more correct information for constructive dialogue at the 67th Session. However, time permitted at the Session for consideration of the Korean government's report is too tight to properly review all aspects presented both by the government and our organization. Thus, we urge the Committee members to effectively use time at the Session and to make constructive dialogue even in very short time. To this end, we encourage them to focus on several major human rights issues, which are now highly disputed in Korean society, in order for the Committee to efficiently consider Korean human rights situation.

In this respect, we select major human rights issues, present recommended questions, which we want the Committee members to ask to delegates from the Republic of Korea, and suggest recommendations, which shall be adopted as concluding observations after the session by the Committee.

Part I Major Human Rights Issues and Recommended Questions

1. Relationship between the Covenant and Domestic Laws

The government report states that "[i]n the event that a law enacted prior to the Covenant's ratification is in conflict with provisions of the Covenant, the Covenant has greater authority. No law enacted in the Republic of Korea may encroach on the rights provided in the Covenant; any such law would be viewed as unconstitutional." furthermore, the government's delegate in the 1992 review of the Committee confirmed the superiority of the Covenant over domestic law.

Meanwhile, in the government's first report on Feb. 10, 1996, the Committee Against

Torture stated "when conflicts between domestic laws and the Covenant arise, the *lex posteriori rule* and *the principle of the precedence of special law* shall be applied." This seems that post-domestic laws can take precedence over the Covenant in some case.

Recommended Questions

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

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

2. Implementation of the Committee's view under the First Optional Protocol

For the past several years, the Committee found in several individual communication cases acting under the First Optional Protocol to the Covenant, that the applicants human rights were violated under the Covenant and they are entitled to effective remedies including appropriate compensation. Furthermore, the Committee asked the government to ensure that similar violations do not occur in the future. However, the views, which were recommended to the government by the Committee, have been ignored by the government. The applicants have never so far been redeemed and even not compensated, not consistent with recommendations. For example, in Jong-Kyu Sohn v. Republic of Korea(Communication No.5 518/1992) the Committee viewed that Mr. Sohn, who was punished for his laborers' union activity, was entitled, under article 2, para.3(a), of the Covenant, to an effective remedy, including appropriate compensation, for having been convicted for exercising his rights to freedom of expression. However, even after this view was issued, the government did not take any measure to implement the above recommendations.

Meanwhile, Mr. Sohn sued the government for compensation after the above was issued, but his lawsuit was rejected by both the trial and appeal court. Recently the Supreme Court finally ruled against Mr. Sohn's request. It judged "the punishment against Mr. Sohn does not constitute violation of freedom of expression provided in article 19 of the Covenant."

Recommended Questions

(A) What measures did the government take after the Committee's views acting under the First Optional Protocol of the Covenant were issued?

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

(C) If the Committee's views are difficult to be implemented because of domestic legal barriers, is there any plan to revise or enact national laws to implement them?

3. National Security Law(NSL)

The Committee, after examining the initial report submitted by the Korean Government in July 1992, recommended that a serious attempt should be made to phase out the NSL, which the Committee perceived as a major obstacle to the full realization of the rights enshrined in the Covenant. In the report to the Commission on Human Rights on November 21, 1995, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the U.N, Mr. Abid Hussain, pointed out "the most important evidence that shows freedom is not well ensured in Korea is the existence of the NSL" and requested that the government repeal the NSL and consider other means. In spite of all the above recommendations, the government has not taken any action on the NSL. The number of arrested NSL violators is 104 in 1993, 393 in 1994, 285 in 1995, 494 in 1996, 674 in 1997, 409 in 1998, respectively. About 90% of them were arrested because of violating Article 7 of NSL(Praising, encouraging, etc. an anti-state organization; Forming or joining enemy-benefiting organizations; Producing, importing, etc. enemy-benefiting expressions).

According to the Criminal Procedure Code, policemen are able to detain for investigation of suspects for a maximum of 10 days and prosecutors for an additional 20 days before indictment. Therefore, the duration for authorities to detain suspects totals up to 30 days. However, the NSL allows the authorities to detain suspects for a longer period: policemen are able to detain national security law related suspects for up to 20 days and prosecutors for up to 30 days, which is totally 20 days longer than those of ordinary suspects. In cases related to the infringement of NSL, suspects may be detained for a maximum of 50 days (Article 19 of the NSL). The Committee against Torture has already recommended the Korean Government at 13 Nov. 1996 that "the 30- or 50-day maximum period of detention in police premises for interrogation purposes before the suspect is charged is too long and should be shortened." Nevertheless, the Korean Government has been ignoring that recommendation.

It is essential that trials be separated from detention centers to prevent investigating authorities from violating detainees' human rights. However, in NSL cases some odd things happen. Suspects held in violation of the NSL are usually arrested by the National Intelligence Service (Former National Security Planning Agency) or Security Investigation Division of the Police Bureau. On warrant they are supposed to be detained in police cells, but in reality they are often locked up, having to undergo

grueling interrogations in the investigating authorities' premise. Furthermore, detention-monitoring activities by prosecutors is not allowed for these detainees, even though Korean law offers prosecutors authority to inspect investigating authorities' detention centers.

Recommended Questions

(A) How many people have been charged/prosecuted/punished for the violation of NSL (especially Article 7 of NSL) since the Government's initial report was reviewed by the Committee?

(B) What's the reason that the government has ignored the Committee's repeated recommendations and views regarding NSL?

(C) What's the plan of the government on issues surrounding the revision or abolition of NSL?

4. Security Observation Law

Those prisoners who violated the NSL or other criminal laws(Criminal Law, or Military Criminal Law) are severely restricted in their freedom of thought and conscience, and their right to privacy and move even after their release. Of the people who have been imprisoned for the violation of Article 4, Article 5, or Article 9 of NSL and certain other national security related laws, those who are"required observation to prevent the repeated offense of crimes because there are sufficient grounds to believe there is such a danger" can be placed under security observation for two years. They are restricted their fundamental rights not because of crime but because of simple future danger. The decision to impose security observation is made by the Minister of Justice based on resolution of an administrative committee, Security Observation Review Committee, and upon the request of a public prosecutor. The period of observation can also be extended. Those under observation are required to report to the local police station about their location, family assets, activities for the past three month and so on. They must also report a trip that is longer than 10 days. They are prevented from communicating with certain designated people, forbidden from attending certain assemblies and demonstrations, and are often ordered to attend certain gatherings.

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

Recommended Questions

(A) How many people have been placed under security observation since the government's initial report was reviewed by the Committee?

(B) Any plan either to abolish or to revise Security Observation Law?

5. Freedom of Association

As the Government's report pointed out, public servants' rights to organization, collective bargaining and collective action are prohibited. The restriction of public servants' basic labor rights has no reasonable ground. Therefore, the provision restricting the basic labor rights should be amended so that it guarantees the basic rights of ordinary public servants, provided that the rights of individuals in the armed forces, law enforcement officials, and fire-fighters be regulated by a separate law, in conformity with Article 9 of ILO Convention 87 and the ILO's recommendations to the Korean Government.

The unemployed and the dismissed workers are denied to organize or join the labor union. As a result, the Korean Confederation of Trade Unions(KCTU), one of the national confederations whose membership is about 500,000, has not yet been protected its rights as a legal union on account that some of directors are dismissed workers. The unemployed and the dismissed workers should also have the right to join the trade union.

Recommended Question

(A) What is the plan of the Government of Korea to withdraw reservations Article 14, paragraph 5 and Article 22 of the Covenant.

6. Pre-Review of Detention

The Covenant, Article 9(3) states that "anyone arrested shall be promptly brought to a judicial officer…." This right is recognized an automatic obligation of government that government shall bring a suspect to a judge before he is detained, regardless of suspects' request. However, the current Korean system regarding this right, which is called 'pre-review of detention,' makes it conditional on the request of the suspects and their legal counselors and even the request can be rejected by judge if he considers not necessary. Monthly request rates of this pre-review system from January to September of 1998, were around 75%. This shows that about 25% suspects are detained without

their appearance before judges.

Recommended Questions

(A) How many arrestees have made use of this system since this system was adopted in 1997?

(B) Any plan for this system to be automatic obligation of the government for all arrestees?

7. National Human Rights Institutions

For the past decades UN has recommended that member states establish national human rights institutions for effective protection of human rights. With regard to principles relating to responsibility, competence and independence of this institutions, UN has suggested several guidelines such as 'Principles Relating to Status of National Institutions(Commission on Human Rights resolution 1992/54 of 3 March 1992; General Assembly resolution 48/134 of 20 December 1993),' so-called '*Paris Principles.*'

Recently Korean government has been discussing establishment of this institution. Korean people are deeply concerned with this move and will judge human rights policy of Kim Dae-joong's administration according to how this institution will be established. However, conflicts around this move between government and human rights NGOs have been serious for the last year. As a result, the establishment of this institution has been delayed. Core arguments are related to independence of this institution. NGOs have strongly requested this institution shall be independent of administration, specifically Ministry of Justice, without which the institution cannot perform its roles. On the other hand, the Ministry of Justice has not recognized full independence of the institution apart from the Ministry. The Ministry's draft for this institution intends for the institution to be held under the control of the Ministry. The most perfect example is that the Ministry has been trying to form this institution as a civilian corporate body, which is destined to be held under supervision of the Ministry in the Korean legal system, while NGOs have requested that the institution shall be established in the form of a government' independent agency. This conflict remains not resolved.

Recommended Questions

(A) Why do most human rights NGOs think that the government's draft for current national human rights institution is not independent and effective for the protection of human rights?

(B) What is government's approach for independence of the institution? Why does the Ministry of Justice try to intervene the institution's mechanism such as appointment of its members and budgetary process?

(C) If the institution is established as a civilian corporate body, not as government's independent agency, can it effectively perform its roles and competence in the relation to investigation agencies such as prosecutors and national security agencies?

8. Humane Treatment of Inmates

According to the government report, it insists that a series of prison reforms have guaranteed inmates all rights mentioned in Article 10 of the Covenant, and is close to satisfying "the Standard Minimum Rules for the Treatment of Prisoners(SMR) endorsed by the UN General Assembly. In spite of a little improvement, however, prison condition is far from meeting international standards.

Korean penitentiary institutions hold too many inmates. The 39 facilities throughout the country are holding approximately 70,000 inmates at any given time. An average of 1,500-3,000 inmates are held in one facility. A report presented by human rights NGOs shows there was a case in which a prison was holding 33 inmates in a small cell of 16.3 square meters. The state-run Korean Criminal Policy Institute reported that the average size of cell per inmate is 1.25 square meters. This high density not only makes it impossible to separate prisoners properly, but also hinders reasonable rehabilitation.

The poor medical facility and the lack of qualified medical personnel pose serious problems. Inmates have difficulty in seeking a doctor even during an illness. It is especially difficult for inmates to obtain proper treatment having to do with specialized medical fields such as dental problems and gynecological illness. According to the parliamentary inspection in 1997, there are only 60 doctors in 39 facilities throughout the country, which means that each is responsible for 1035 inmates. To make matters worse, the reality is that doctors in prisons are working only during the day, while unqualified prison officials take change of their responsibilities at night.

The 1995 amendment of prison laws is considered to bring some progress in the area of discipline for inmates. However, this is not sufficient to be recognized substantial progress because in some cases inmates are still unduly disciplined just on the reason that they protest against unjust treatment or report complaint on prison condition. For instance Oct. 23, 1997, an inmate of the Jeonjoo prison was given solitary confinement for 51 days with his arms, wrists, ankles and waist tied with handcuffs and chains, for

the sole reason that he looked at the eyes of the superintendent and protested against the insulting manner in which the superintendent had addressed him.

Recommended Questions

(A) By what measures will the Korean government reduce prison's density in terms of number of inmates?

(B) What is the Korean government's measure by which inmates' medical care will be reformed?

(C) How many complaints and /or suits have been filed by prisoners and /or families of prisoners for mistreatment by prison officials since the ratification of the Covenant? How many petitions have been accepted by the authority such as the Ministry of Justice and/or courts?

9. Finger-prints in the National Identification Card

Each citizen is required to get the "National Identification Card" on his/her 17th birthday. According to the Resident Registration Act, one must apply to have it issued. Furthermore, the government levies penalties if the prospective applicant does not apply for the card. Without this ID Card, it is impossible to live comfortably in Korean society as it is an essential document of identification. All the citizens are required to submit their finger prints when they get the ID card. The police keeps the finger print data. A photo, name, ID number (including birth date), permanent address, present address, name of householder, issuing date, military services and issuing institute are inscribed on the front of the card. On the back of it, there is a history resident addresses and the finger print of the thumb.

The government planned to issue IC card type "Electronic ID card" instead of the existing National Identification Card made of paper and covered with vinyl. The new ID Card was planned to integrate 42 items in 7 fields such as the existing National Identification Card, Medicare Card, Drivers' License, Pension Certificate, Full and Extracted Registration Transcript, Registered Seal Certificate and Finger Prints, and to be issued to 34 million people who are over 17, and to be used for the purpose of identification as well as easy access to the transcript of the information. But NGOs have claimed that the era of electronic dictatorship will begin if the Card is introduced. Objections from NGOs, the academia, and journalists, did not result in full dismissal of the plan, but in a slight revision. In the revised draft, the government gave up the plan of fully synthesizing resident registration information, instead, deciding to make only the information on the National Identification Card accessible.

The government is currently implementing a plan to issue a plastic replacement of the ID card. In the process, the public prosecutor's office is digitizing the finger prints of any citizen past the age of 17, without any legal justification. It violates the right to privacy and regards every citizen as a criminal. Human rights NGOs are opposing digitizing the finger prints in the process of the replacement of the ID card.

Recommended Question

(A) How many people have the National ID Card, and how many people does the Government need to manage specially on the ground of crimes?

10. Right to a Defense Counsel

So far a considerable number of human rights human rights violations by the government have been seen during criminal investigation, especially interrogation process to criminal suspects. Human rights victims have alleged that they were compelled to confess by investigators' torture during interrogation. Thus, presence of a defense counsel can be an effective way to prevent torture and reduce allegation of human rights violations. In Korea, however, a defense counsel cannot be present when a suspect is being questioned by investigators. Although many legal scholars and human rights activists support presence of a legal counsel during interrogation, this view is not recognized by public prosecutors and other investigation agencies.

Recently National Police Agency has made public that they will allow a defense counsel to be present at interrogation for his/her client. However, this measure is solely based on police's permission, not on suspect's or defense counsel's legal right. As a result, police, anytime, can prohibit the presence for its need. Meanwhile, a special committee under president suggested in its recent report that presence of a defense counsel during interrogation be permitted for prevention of human rights abuse by investigation agencies. Therefore, this is good time for this system to be enacted if the government has strong will for human rights protection.

With regard to presence of counsel, the Committee under the Convention Against Torture has recommended at the concluding observations of the Committee under the Convention Against Torture in 1997 that the presence of counsel be permitted during interrogation, especially since such presence would be in furtherance of the implementation of article 15 of the Convention.

Recommended Questions

(A) Is defense counsels allowed to be present during interrogation of suspects by

investigation agencies?

(B) If not, Why? Any plan for this right to be enacted in criminal procedure laws?

12. Excessive Wire-tapping

Recently wire-tapping executed by investigation agencies has been highly disputed in Korea. According to the Act on Protection of Communication Secret, tapping is allowed in most criminal cases. However, the fundamental problem of this law is seen in the provision that allows investigation agencies to tap without permission from courts. They can tap without courts' permission in the name of emergency tapping, in which they are to apply to courts for a tapping warrant within 48 hours. This system allows investigation agencies to freely tap without courts' permission within 48 hours. Meanwhile, courts' permission has been too lenient to control the abuse of investigations' tapping. According to the recent Supreme Court's report, there were 6,638 cases of wire-tapping in 1998. This was a 10.6% from 6,002 case in 1997. Out of applied cases, courts rejected only 1.5%.

PartII Draft Recommendations for Concluding Observations of the Committee

1. The national laws should be further reviewed in the lights of the Covenant. In event that national laws are inconsistent with the Covenant, they shall be repealed or revised to be in conformity with the Covenant. The *lex posteriori rule* and *the principle of the precedence of special law,* which can undermine precedence of the Covenant over national laws, shall not be applied in domestic legal practice.

2. The Republic of Korea should observe views recommended by the Committee acting under the First Optional Protocol of the Covenant. The government should provide proper remedies for victims whose human rights have been violated including compensation and ensure that similar violations do not occur in the future. To this end, national laws shall be enacted or revised if necessary.

3. The Committee recommends once again that the National Security Law, which is the major obstacle to the full realization of the rights enshrined in the Covenant, be abolished. Especially Article 7 of NSL, which is the core of NSL and repeatedly recommended to be repealed by international community, should be abolished immediately and the result should be reported to the Committee.

4. The Security Observation Law is in obvious violation of Articles 12, 17, and 18 of the Covenant, so the Committee recommends that the Security Observation Law be repealed immediately.

5. The Committee strongly suggests that the Republic of Korea withdraw its reservations and declarations concerning Article 14, paragraph 5 and Article 22 of the Covenant.

6. The Republic of Korea should revise 'pre-review of detention' in criminal procedure in order to ensure article 9(3) of the Covenant, which states "anyone arrested shall be promptly brought to a judicial officer…." The pre-review of detention shall be automatic obligation of the government, not based on suspects' request.

7. National human rights institution shall be established with proper competence and independence. Especially the institution shall be independent of other governmental bodies such as Ministry of Justice, in terms of appointment of members and staffs, budgetary process and other administration mechanism.

8. The Republic of Korea should take urgent action to make inmates' population density appropriate enough to meet human dignity. Medical care and disciplinary measures for inmates shall be reformed to be in conformity with article 7 and 10(3) of the Covenant.

9. The Committee recommends that digitizing finger prints in the process of the replacement of the National ID Card be stopped.

10. The Committee recommends that the presence of a defense counsel be permitted during interrogation by investigation agencies.

11. Broadly exercised wire-tapping shall be immediately stopped and reformed to protect peoples' privacy