

tolerated; various factors should first be considered in ruling for the death penalty. Namely, the motive, the form, the nature of the crime, the means and the degree of brutality of the criminal act, the gravity of its result, the number of victims, emotions/sentiments toward the injury, the criminal's age, prior convictions, the circumstances following commitment of the crime, the environment, education and the upbringing of the criminal should be taken into consideration. After reflecting on all these factors the death penalty can be sentenced under absolutely inevitable circumstances." (Decision 92 DO 1086 of 14 August 1992). As for the Constitutional Court, two constitutional petitions have been filed arguing that prescription of the death penalty in Article 338 of the Criminal Code is unconstitutional. Both were rejected for violation of the filing procedure for constitutional petitions (Decision 89 HEONMA 36 of 25 November 1993, 90 HEONBA 13 of 29 December 1994).

59. As the information below indicates, the number of death sentences and executions increased in 1995. This was due to an increase in the prosecution of flagrant, organized crimes, e.g., the crime syndicate "Jijonpa" run by six individuals including KIM Kih-Hwan, responsible for series of immoral crimes, (i.e., kidnap, murder, mutilation and incineration of victims).

* Persons sentenced to death and executed (1991-1996)

Year	1991	1992	1993	1994	1995	1996(Jan.-Jun.)
Final Sentence	29	16	10	5	19	2
Execution	9	9	0	15	19	0

60. In 1991, seven death sentence appeals were reviewed, and none thereafter. All appeals were rejected.

Sentencing of death penalty under due process of law

61. As stated in the initial report, the death penalty is sentenced through a fair trial by an independent court, under due process of law, that is to say, innocence of the accused is presumed, right to counsel is fully protected and the rights of appeal and to a retrial are strictly observed.

Paragraph 4

Right to request amnesty and commutation

62. It has already been observed in the initial report that a person sentenced to capital punishment may petition for amnesty or commutation under Article 26 of the Constitution (right of petition), or Articles 4, 6 and 7 of the Petition Act. The President may grant amnesty or commutation under Article 79 of the Constitution (amnesty, commutation and restoration of rights) or Articles 2, 3, 5 and 8 of the Amnesty Act.

Of all those sentenced to the death penalty, one was granted amnesty and the sentences of 35 others were commuted between 1951 and 1990. Cases of amnesty or commutation have not occurred since 1991, owing to the fact that criminals sentenced to death in that period all committed the most flagrant crimes. The sentencing of the death penalty on those individuals received the full support from the people in the Republic of Korea.

Paragraph 5

Prohibition on execution of minors and pregnant women

63. As mentioned in the initial report, the Juvenile Act was revised to increase the minimum age for the death sentence from 16 to 18, and Article 469 of the Penal Procedure Code prohibits execution of a pregnant woman.

Article 7

Prohibition of torture and other inhumane treatment

64. Torture and inhumane treatment are categorically prohibited in the present Constitution, Criminal Code, Penal Procedure Code and other relevant laws, as discussed in the initial report.
65. The principle of prohibition of torture and inhumane treatment is provided in Article 12, paragraph 2 of the Constitution: "no citizen shall be tortured or be compelled to testify against him or herself in a criminal case." Confirmation of this principle can be found in Articles 123, 124, and 125 of the Criminal Code, Article 4-2 of the Act Concerning Aggravated Punishment for Specified Crimes and Article 198-2 of the Penal Procedure Code.

The revised Penal Procedure Code of 29 December 1995 obligates the prosecutor to inspect, more than once every month, not only the detention facilities of police stations, but also confinement areas of every investigating bureau. If the prosecutor decides that any act of torture or inhumane treatment has taken place, he or she can order the instant release

of arrested or detained suspects, or transfer the case to the Prosecutor's office.

66. Furthermore, Article 12, paragraph 7 of the Constitution provides that "when a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged detention, deceit, etc., ... such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession." Article 309 of the Penal Procedure Code stipulates, in addition to the disqualifying factors mentioned above, that a confession likely to have been extracted involuntarily may not be admitted as evidence. Therefore it is guaranteed in respect of laws of evidence that torture and other acts of intimidation will not be inflicted upon the suspect.

Supreme Court decisions denying the proof value of confessions through torture, etc., have prohibited the use of torture. The Court's decision of 28 September 1993 (Decision 93 DO 1843) reflects this principle as it recounts as follows: "being under detention without a warrant for one and a half days, questioned by an investigator who was junior by 15 years, with knees knelt bent and without sleep, would have caused deep humiliation and indignity and might have led to a loss of will to defend oneself. Accordingly, from the general circumstances of the confession, there exists sufficient reason to believe that the accused's confession was not voluntary and therefore can't be admissible as a valid evidence of conviction."

67. To prevent torture or inhumane treatment in the performance of official duties, attention has been paid not only to legal or institutional systems, but also to the attitudes of public officials engaged in the judicial procedure. Therefore, education for public officials on the prevention of torture and other abuses has been emphasized. Under the direction of the Supreme Public Prosecutor's Office, each public prosecutor's office and branch

office has contributed to educating 7,301 judicial police officials and the personnel of the Public Prosecutor's Office, (i.e. 12,076 persons) by offering them special human rights training during the year of 1995.

68. In particular, investigating agencies including the police, are increasing their efforts to prevent torture or inhumane treatment. Also, as stated in the initial report, all necessary efforts have been made to prevent torture and other infringements of human rights by the appointment of a public prosecutor in charge of human rights affairs. In addition, the chief of investigation of each police station is appointed as a human rights protection officer. He or she is responsible for educating investigative officers and inspecting detention cells in promotion of the human rights protection policy. This practice has been ongoing since January 1992. The Human Rights Infringement Report Center was established in the Superintendent's Office of the National Police Agency in May 1993. The Center receives complaints and deals with human rights infringements such as violent or cruel acts during investigation.

Remedy for persons who have suffered from torture or inhumane treatment

69. Any person who has suffered from torture or inhumane treatment while being detained by authorities may file a complaint with the judicial authorities. In case the relevant illegal act is related to the scope of duty of a public official, the complainant may demand compensation from the State. Furthermore, the initial report already noted that, if the public prosecutor takes a disposition of non-indictment, in disregard of cruel treatment during an investigation, the plaintiff may apply to the relevant court to rule on the prosecutor's decision and to reopen the case.
70. Some investigating agents were punished due to violent or cruel treatment against criminal suspects during performance of duty. The number of cases

reported in recent years is 2 for 1991, 1 for 1992, 7 for 1993, and 4 for 1994.

Accession to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and submission of the initial report

71. As a means of proclaiming its goal of eradicating torture and inhumane treatment and participating in the international effort to assure human rights, the Republic of Korea acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention took effect on 8 February 1995, following deposit of the instrument of accession with the Secretary-General of the United Nations on 9 January 1995. The initial report under the above Convention was submitted on 9 February 1996 and it described various laws and institutions of the Republic of Korea protecting persons from torture or inhumane treatment.

Prohibition of cruel punishments

72. Article 12, paragraph 1 of the Constitution provides that "no person shall be punished or placed under preventive restrictions or subject to involuntary labour except as provided by law and through lawful procedures." This kind of punishment is delineated in Article 41 of the Criminal Code, and the Penal Administration Act prescribes strict and firm procedures for the execution of such punishment. Punishments not provided for by law are completely precluded herewith.

Article 8

73. The previous report affirmed that the prohibition of slavery, servitude, forced or compulsory labour is guaranteed under Article 10 of the Constitution, which provides for human worth, dignity and the right to pursue happiness. Furthermore, Article 12, paragraph 1 of the Constitution states that no person be subjected to involuntary labour except as provided for by law and through lawful procedures.
74. In accordance with the spirit of the above-mentioned clauses of the Constitution, Article 324 of the Criminal Code prescribes punishments for persons obstructing another from the exercise of his or her fundamental rights and for those forcing another, through violence or intimidation, to do what is not his or her duty. Article 6 of the Labor Standards Act stipulates that "an employer shall not force an employee to work against his/her own free-will through use of violence, threats, confinement or by any other means which unjustly restrict mental or physical freedom." Articles 50 to 63 of the Labor Standards Act prohibit forced, excessive labour of women and minors.

The Employment Security Act's Article 46, which was revised in January 1994, provides a penalty for any person who fills a job placement or carries out recruitment or supply of labour by means of violence and detention. The revised Anti-Prostitution Act strongly prohibits the coerced servitude common in prostitution by reinforcing penal provisions on forced prostitution by means of violence, intimidation, etc.

75. The principles that prohibit compulsory labour are applied to the maximum extent to military service or to servitude not included in the term of forced or compulsory labour under Article 8, paragraph 3, subparagraph (c) of the Covenant.

All citizens of the Republic of Korea are required to take up the duty of national defense due to the extraordinary situation of the Korean peninsula. But the Military Service Act, the Martial Court Act and other laws guarantee the human rights of individuals obligated to perform military service. In order to prevent excessive work from being introduced to prisoners with penal labour sentences, the Penal Administration Act and related Regulations prescribe a defined working environment, a manifestation of the type of labour, and limits on working hours to allow for proper rest.

Article 9

Paragraph 1

Liberty of person and prohibition of arbitrary arrest and detention

76. The legal system of the Republic of Korea, including its guarantees of the liberty and security of persons, was detailed in the initial report: paragraphs 1 and 3 of Article 12 of the Constitution, proclaim the principles of due process of law as they guarantee people's liberty. These principles are most particularly embodied in the provisions of Articles 70(causes for detention), 73(issuance of warrant), 75(form of warrant of detention), 85(procedure for execution of warrants of detention) and 201(request for warrants of detention by the public prosecutor) of the Penal Procedure Code.

The Republic of Korea has made arrangements for even more thorough guarantees of liberty and security of person in the new Penal Procedure Code, as revised and promulgated on 29 December 1995 and to be carried into effect on 1 January 1997 (hereinafter referred to as "the revised Penal Procedure Code").

77. As for detention, the strict and firm principle of arrest by warrant is provided in the Penal Procedure Code. However, some concern was raised in regard to the voluntary appearance system, which permitted very brief custody of suspects at a certain place. There was a potential for infringement of human rights, however, due to the absence of a definite clause regulating voluntary appearance. Namely, investigating agencies maintained the practice of issuing detention warrants after the voluntary appearance and interrogation of the suspect at the police station. In an effort to eliminate potential infringement of human rights for voluntary appearance, the Police Officer Duty Performance Act, which provides for voluntary appearance, was revised on 8 March 1991. The revisions firmly restrict the requirements, procedures and time of arrests associated with voluntary appearance. Ceaseless indications of problems, however, have led to the establishment of the arrest warrant system in the revised Penal Procedure Code as a fundamental solution to the question of voluntary appearance.

Therefore, if there is a proper reason to believe that the suspect has committed the crime, and the suspect does not obey summons without justifiable reasons, the suspect may be arrested with an arrest warrant issued by the competent court judge upon request of the public prosecutor. For judicial police officers to obtain such a warrant, they must petition the public prosecutor to request issuance of an arrest warrant by a competent court judge. This system ensures that the possible arrest of a suspect pursuant to a voluntary appearance, can be precluded and the principle of arrest by warrant can be clarified.

78. Detention of persons under the National Security Law is conducted as in any other criminal case--under the strict and firm requirement of a warrant. On one occasion, it was asserted that agents of the Agency for National Security Planning, acting as judicial police officers for crimes in violation of the National Security Law, infringed upon people's human rights in the

investigation process. Consequently a clause was formulated during the revision of the Agency for the National Security Planning Act on 5 January 1994. The clause provides that “agents of the Agency for National Security Planning shall neither arrest nor confine individuals by abuse of authority or for neglect of the procedure prescribed by law.” Imprisonment and hard labour not exceeding seven years were prescribed for violation of the Act, thereby assuring the protection against human rights abuses during the investigatory process.

Paragraph 2

Notification of the reasons for arrest and related charges

79. Article 12, paragraph 5 of the Constitution and Articles 72 and 209 of the Penal Procedure Code guarantee that persons being arrested or detained be notified of the reasons for the arrest or detention and the charges.

Furthermore, Article 12, paragraph 5, and Article 87 of the Penal Procedure Code provide that the defense counsel or family of a suspect or accused who is arrested or detained, be notified without delay of the reason for, and the time and place of, the arrest or detention. Until recently, notification of the basis for the charges had been made under the Regulations of the Supreme Public Prosecutor’s Office. However, Article 87 of the revised Penal Procedure Code stipulates procedures for notification of not only the reasons for detention but also the gist of the charges. This is in complete conformity with Article 9, paragraph 2 of the Covenant.

Paragraph 3

Speedy operation of criminal proceedings

80. As was indicated in the initial report, Article 27, paragraph 3 of the Constitution ensures the right to a speedy trial; Articles 202, 203 and 205 of the Penal Procedure Code establish maximum detention periods by investigating agencies; and Article 92 of the Penal Procedure Code stipulates a speedy criminal trial procedure of the court.

81. In a case involving a violation of the National Security Law, the maximum detention period is 50 days, in accordance with the warrant issued by the judge. This is longer than that of general criminal cases (30 days), because cases involving violation of the National Security Law, such as the crime of espionage, require long-term and specialized investigation procedures and information collecting.

The Constitutional Court once decided that “as for crimes stipulated in Articles 7 (praise and encouragement of anti-State groups) and 10 (non-notification) of the National Security Law, requirements for the constitution of the crimes are not particularly intricate, and collecting evidence for these crimes is not difficult due to the nature of the case; therefore allowing the above crimes a longer detention period than that of an ordinary criminal case is unnecessary and long-term detention, hence, is unconstitutional” (Decision 90 HEONBA 82 of 14 April 1992). At present, the Constitutional Court has been requested to adjudicate the unconstitutionality of other provisions of the National Security Law stipulating relatively longer detention periods. (Decision 96 HEONGA 8, 9 and 10)

Restraint upon detention of prisoners on trial

82. The Constitution is not explicit in matters of pre-trial detention. However, Article 199, paragraph 1 of the Penal Procedure Code restricts the use of coercive measures (for example, arrest, search or detention) during an investigation to exceptional cases prescribed by law. The Code provides that “necessary examinations may be made in order to carry out investigations; however, coercive measures shall not be taken except when authorized by this Code.” Furthermore, the revised Penal Procedure Code further clarifies the above principle by amending the provision of Article 199, paragraph 1; i.e. “coercive measures shall not be taken except when authorized by this Code and only to the minimum extent necessary.”

Efforts to reduce the time of confinement of the accused under trial have resulted in the reduced rate of arrests from all criminal cases, i.e., from 8.7% in 1990 to 7.3% in 1995. This trend of declining arrest rates is expected to continue.

83. With an aim to enlarge the scope of release on bail, not only after indictment but also before indictment, Article 214-2, paragraph 4 of the revised Penal Procedure Code stipulates release on payment of bail which is sufficient to ensure the suspect’s presence in case a review of the legality of detention has been requested.

* Recent data on operation of the bail system (in number of persons).

Year	Request	Permitted	Not Permitted	Bail ex officio
1991	41,624	25,406	16,218	91
1992	41,064	24,481	16,583	116
1993	45,911	26,032	19,897	199
1994	41,833	23,297	18,536	235

Year	Request	Permitted	Not Permitted	Bail ex officio
1995	45,381	26,001	19,380	323

Paragraph 4

Review of the legality of the arrest or detention

84. Article 12, paragraph 6 of the Constitution declares that “any person who is arrested or detained, shall have the right to request the court to review the legality of the arrest or detention,” while the right of the confined suspect to submit a petition to examine the legality of the confinement is stipulated in Articles 214-2 and 214-3 of the present Penal Procedure Code. However, there was no explicit provision in the Penal Procedure Code on the right of the arrested to request review of the legality of the arrest, and it had been pointed out that the constitutional ideas have not been thoroughly reflected. Under the revised Penal Procedure Code, the arrested suspect may now apply for review of the legality of arrest.

* Recent data on the operation of the review system of the legality of detention (in number of persons).

Year	Requests	Disposition		
		Release	Dismissal	Withdrawal
1991	11,984	6,249	5,049	686
1992	10,682	5,654	4,486	542
1993	12,027	6,043	5,418	566
1994	10,201	5,245	4,474	482
1995	11,032	5,513	5,022	497

Paragraph 5

Penal compensation

85. The initial report mentioned that under Article 28 of the Constitution and the Penal Compensation Act, an accused person, who has been placed under detention, without being indicted as prescribed by law or who is acquitted by a court, shall be entitled to claim proper compensation from the State.

The upper limit for penal compensation was raised from 8,000 Won (approx. US\$10) per day to 15,000 Won (approx. US\$19) per day by the Enforcement Decree of the Penal Compensation Act of 24 February 1988. The 19 June 1991 revision of the Enforcement Decree, did not fix the upper limit at an invariable sum, but was in fact raised by prescribing five times the sum of minimum per diem under the Minimum Wage Act of the year when the cause of the compensation claim was generated. This makes substantial compensation possible through linkage to fluctuations in consumer prices.

* Recent data on penal compensation granted is as follows.

Year	1991	1992	1993	1994	1995
Number of cases	123	147	207	238	280
Total sum (unit, 1,000 Won)	307,748	355,678	760,594	941,586	1,305,808

Article 10

Paragraph 1

Protection of human rights with regard to inmates through revision of the Penal Administration Act

86. It was stated in the initial report that all inmates are subject to humane treatment according to the principle of respect for human rights stipulated in Article 10 of the Constitution. Treatment of inmates has been further improved by the revision of the Penal Administration Act.

In order to more positively achieve the ideals of correction, i.e. enlightenment and social rehabilitation for the inmates (unconvicted prisoners and convicts), and to promote the rights of inmates, the Penal Administration Act was revised on 5 January 1995. The revisions improved and updated several provisions inadequate for the present situation or potentially violative of human rights. They also introduced advanced correctional programs desirable for social rehabilitation. Through the revision of the Penal Administration Act, legal provisions on penal administration of the Republic of Korea are now in further accord with the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations. Explanation on major revised features of the Penal Administration Act will be explained in the subsequent chapters.

Improvement on basic treatment of inmates

87. The hair-cutting arrangements for the prisoners, which have been carried out since 1912, were abolished to respect the sense of honour of the prisoners and to facilitate the transition process into civilian life after release from prison (Article 23 of the Penal Administration Act).
88. In the past, the cost for meals and clothing for unconvicted prisoners were

borne, in principle, by the prisoners themselves. But improvements were made to reduce the financial burden on the prisoner and to promote prisoner's convenience in accommodation; meals and clothing are supplied, in principle, by the State. The unconvicted prisoner, however, may still provide these needs for him or herself if desired (Articles 20 and 21 of the Penal Administration Act).

Extended visitation rights for inmates

89. Visits to inmates were normally limited to relatives and any other persons who were permitted for certain purposes. The relevant provisions were revised to grant extensive visitation rights to inmates by allowing for visits by any visitor unless considered improper for reasons of edification (Article 18, paragraph 2 of the Penal Administration Act). Inmates with good conduct records, in particular, are allowed to receive visitors freely in a separate and open place without the presence of a correction officer.

Depending on the needs of inmate management, however, the number of visits may be restricted; unconvicted prisoners may receive one visit per day, and the frequency of visits allowed to convicts (i.e. one visit per day, one visit per week, three visits per month or two visits per month) is determined by his or her prison record.

90. Improved arrangements allow inmates to pursue creative activities. For example inmates are allowed, without restriction, to personally possess writing tools, which had been regulated in the past; all inmates may be active in not only writing letters or documents, but writing literary works such as poems, novels and essays. With the authorization of the prison governor, inmates may even publish their literary works in newspapers, magazines, etc. (Article 18 of the Penal Administration Act, Articles 61, 66 and 67 of the Enforcement Decree of the above Act, Article 46 of the Rule

Improvement of disciplinary measures against inmates

91. As a means of promoting the rights and interest of inmates, provisions on punishment of prisoners who have violated regulations were revised to emphasize humanitarian treatment and educational goals of penal administration. For instance, nine types of punishment were reduced to five by abolishing diet restrictions, prohibition of visits and correspondence, suspension of work and suspension of exercise, and prohibition of reading was eased to allow reading for a shorter period of time, so that disciplinary measures against inmates would be minimized (Article 46, paragraph 2 of the Penal Administration Act).

Long-term prisoners

92. In the Republic of Korea, there are several long-term prisoners who have been serving sentences for more than 20 years. These persons were sentenced to life imprisonment for being involved in espionage, anti-state activities, and anti-humanitarian crimes such as killing of innocent citizens. They are therefore not considered to be prisoners of war.

These persons do not benefit from parole, because a possible second offense cannot be precluded due to the ideological nature of the crimes and pure lack of remorse. In addition, the requirements for parole prescribed in the Penal Administration Act-- a combined evaluation of conduct record, daily attitude, social adaptability--are not satisfied for these persons.

Even in cases of long-term prisoners not satisfying the requirements of parole, they are, if extremely aged or sick and if chances of a second offense are slim, released on parole or their penalty is suspended; from 1991 to

1996, 20 long-term prisoners, including Kim Seon-myeong and Ahn Hak-seop, have been released through general amnesty.

93. At correctional facilities, long-term prisoners are equally treated as other inmates in all aspects, including visits, correspondence, meals, exercise, medical care, and accommodation. These persons receive correctional education such as paying visits to the community establishments. The goal is to guide them back to participation in the free and democratic society. Conversion of thought and belief is not coerced and is completely dependent upon their own free will.

Paragraph 2

Improvement of treatment of unconvicted prisoners

94. It was already observed in the initial report that prisoners awaiting trial or being tried were accommodated separately from convicts and granted various rights based on the principle of presumed innocence. The following improvements have been made since the submission of the initial report.
95. Under Article 62 of the previous Penal Administration Act, provisions regarding convicts were comprehensively applied, mutatis mutandis, to prisoners under trial. The revised Penal Administration Act, however, distinguishes the application of law and treatment of unconvicted prisoners presumed innocent from those of sentenced convicts by strictly differentiating between provisions applied solely to convicts and those applied solely to unconvicted prisoners.
96. The rights to private communication with counsel and privacy of correspondence are protected to the utmost. A new provision with regard to unconvicted prisoners has been established to specify that correction

officials are not permitted to be present, to listen to, or to record the contents of meetings between suspect and counsel, and in principle, letters from counsel are not to be examined (Article 66 of the Penal Administration Act).

The Constitutional Court decided that “examination of correspondence between a unconvicted prisoner and defense counsel or to-be defense counsel under Article 62 of the previous Penal Administration Act infringes the constitutional right of privacy of correspondence and right to counsel, unless there are reasonable causes to believe that items prohibited from possession such as narcotics have been inserted or that its contents violate penal laws by alluding escape, destruction of evidence, discipline of the accommodation facilities, destruction of order.” (92 HEONMA 144 of 21 July 1995)

97. Having unconvicted prisoners who are presumed innocent wear the same uniform as convicts is not desirable treatment nor is it in conformity with the provisions of Standard Minimum Rules for the Treatment of Prisoners, which states that “if prisoners under trial are obliged to put on clothes provided by the Government, the clothes have to be different from those provided to convicts.” From January 1996 onward, the dignity of prisoners under trial is protected by distinguishing their uniforms from those of convicts. As for convicts, the colour of men’s and women’s uniforms are indigo blue and gray respectively; as for prisoners under trial, the men’s clothes are brown and women’s are light green. As for self-provided clothes, various types of modern styles with comfortable and natural impressions are allowed.

Paragraphs 2 and 3

Coping with juvenile delinquents and separate accommodation

98. Juvenile delinquents under 20 years of age are only prosecuted under the ordinary penal procedure in felony cases. Otherwise their cases are classified as protective cases. The juvenile division of the court examines the cases and makes decisions on various protection measures such as accommodation in the juvenile reformatory, protective surveillance, commitment to juvenile protection facilities, and hand-over to parents or guardians for custody to assure protection.
99. Juvenile delinquents brought to trial under ordinary penal procedures are accommodated in complete separation from adult convicts. Until the terms of the sentence are decided, the juvenile delinquent is accommodated at detention houses in a zone segregated from adult prisoners. Afterwards, he or she is accommodated in a juvenile correction house.

Juvenile delinquents under arrest, whose case are classified as protective ones, are examined by the juvenile division of the court. The background history, intelligence quotient test, and aptitude test are compiled at the Juvenile Classification Inspection Institute before the decision of the court, and upon reflection of the test results, the juvenile division of the court decides the type of protective measures such as accommodation in juvenile reformatory, protective surveillance, etc.

100. Juvenile offenders are segregated from adult convicts. They are also protected from harmful influence among juvenile offenders under Article 8 of the Juvenile Reformatory Act, which provides that "persons under age of 16 and above that age shall be accommodated separately."

Classified treatment of juvenile delinquents

101. Boys or girls accommodated in a juvenile reformatory are granted protection and correctional education according to the period of sentencing. The educational course depends upon the results of the classification examination by the Inspection Committee for Classification of Juveniles under Protection.

At present, juvenile reformatories are categorized by function, i.e. four educational reformatories, four vocational training reformatories, one girls' reformatory, one special reformatory and two general reformatories. Due to the increase in the number of juvenile delinquents with a habitual inclination to inhale hallucinogenic substances such as glue or butane, narcotics offenders are accommodated separately in one vocational training reformatory where medical treatment is given priority, alongside vocational education. Education reformatories run education programmes for elementary, junior high and senior high schools under the Education Act and promote advancement to higher levels of education or enrollment into other educational institutions. Through public vocational training, vocational training reformatories enable juvenile delinquents to obtain technical skill licenses in 17 various fields such as car maintenance. Juvenile offenders who have committed felonies such as organized crimes, however, are accommodated in a special reformatory for special education.

102. For well-behaved youths of juvenile reformatories, the family boarding system was introduced in May 1994. Family members may stay together for certain periods with the juvenile delinquents in an establishment detached from the reformatories. Even if their full term has not been served, juveniles are allowed to leave the reformatories more often to participate in family occasions such as a parent's sixtieth birthday (traditionally, parents' Sixtieth birthdays have a special meaning in Korea) and weddings of brothers or sisters. The intention is to improve family

relations and social adaptability (Articles 52 and 53 of the Enforcement Decree of the Juvenile Reformatory Act).

Open treatment of inmates

103. Since 1 September 1988, open correction facilities without walls and locks have been in operation. Well behaved prisoners are accommodated within and are allowed to commute to outside companies. From October 1991, commuting-to-work-outside was extended to exemplary inmates of general correction facilities. To reduce the chances of a second offense, inmates may master modern technical skills, and after release from prison, are employed at the companies where they received training. In 1995, an average of 1,000 inmates per day commuted to work outside.

Initially, open treatment of this kind was based on a directive of the Ministry of Justice. Prescription by law, however, was eventually provided by Article 44, paragraph 2 of the revised Penal Administration Act (of 5 January 1995) which specifies that "Inmates with an excellent conduct record and high estimates of adaptation to society may be accommodated in an open facility (facility as a whole or part of correction houses or juvenile correction houses without some parts of common accommodation equipment or measures to prevent escape) and be granted treatment perceived necessary for social life."

Modernization of vocational and technical training

104. Vocational training was offered in order to stimulate the will of the convict and to have him or her master at least one technical skill so as to make employment more likely after release from prison. The system was renovated in accordance with the demands of today's industry for modern

technical skills. The technical education is concentrated on highly-demanded jobs including computer programming, car maintenance, and construction skills, with an aim to educate a highly skilled individual capable of competing in the workforce.

Prevention of criminal influence through classified internment of convicts

105. In order to prevent criminal influence among convicts and operate effective edification programmes, correctional facilities, in April 1994, were categorized in the following groups: 1) for first-time offenders; 2) for offenders with no more than two convictions; 3) for offenders with no less than three convictions; and 4) for special functions.

Establishment of the Life Guidance House for Parole Expectants

106. For the efficient operation of the social rehabilitation training for parole expectants, "the Life Guidance House for Parole Expectants" was established in July 1994. To prevent a second offense, these individuals are put on parole after fulfilling both the commuting-to-work-outside programme and receiving the necessary training for two months in an open environment. To date, 66,241 parolees-to-be received social rehabilitation training.

Article 11

107. Under the legal system of the Republic of Korea, failure to perform contractual obligations incurs civil liability, but that mere failure does not constitute a crime. Thus, no person may be arrested or detained on the grounds that he or she fails to perform contractual obligations.

Article 12

108. The initial report already observed that freedom of residence and the right to move at will guaranteed under Article 14 of the Constitution and that these rights may be restricted only for the purposes of national security, the maintenance of law and order or public welfare.
109. Visits to the northern part of the Korean Peninsula (hereinafter referred to as "North Korea") without approval of the Government and knowing that it may endanger the national existence, security or free democratic basic order, is prosecuted under Article 6 of the National Security Law.

The Republic of Korea, with an aim to achieve peaceful unification through a free and democratic method, adopted the South-North Basic Agreement of 9 February 1992, and legislated the Law on Exchange and Cooperation between the South and the North. Under this Law, any visits and trade of goods necessary for exchange and cooperation between the South and the North, with the consent of the Government, is allowed. Anti-State acts exceeding this framework are restricted under the law from the viewpoint of national security.

110. Citizens and aliens sojourning in the Republic of Korea are guaranteed the

freedom to leave the country. However, when deemed particularly necessary for national security or maintenance of order, certain minimum restrictions may be applied.

As for citizens, Article 4 of the Immigration Control Act prescribes prohibition of departure of a person whose leaving the country is deemed to be particularly detrimental to the interests of the Republic of Korea or to criminal investigation. Furthermore, the Enforcement Rules of the above Law enumerate in detail the following reasons for which persons may be prohibited from departure: delinquency without justifiable cause in payment of national taxes, duties or local taxes beyond a certain amount; delinquency in payment of a fine or forfeit beyond a certain amount; failure to complete penal servitude or a prison sentence. Under the above-mentioned Enforcement Rules, a person may also be prohibited from leaving the country if that individual is a target of criminal investigation or involved in a pending criminal case, or is the subject of suspension of execution of sentence or of indictment.

As for aliens sojourning in the Republic of Korea, the Immigration Control Act specifies in Article 29 that an individual's departure from the country may be suspended if that person is deemed harmful to the security or social order of the Republic of Korea; or if that individual is suspected of committing a grave crime and is under investigation; or is in arrears on the payment of taxes or other public imposts; or if that person's departure is deemed improper and damaging to the interests of the Republic of Korea.

Notice of prohibition or suspension of departure must be given to the person in question within three days after the decision has been made. Persons wishing to protest such a decision may file an objection with the Minister of Justice, and as a separate procedure, administrative adjudication or administrative litigation may be initiated.

Article 13

111. Expulsion of foreigners is limited to the causes for deportation specified in Article 46 of the Immigration Control Act. Reasons for deporting foreigners under the above Article are: entry without an appropriate visa; entry of persons prohibited from admission to the country; violation of the conditions set forth in the entry permission; landing without permission; violation of the conditions set forth in the landing permission; illegal sojourn or unauthorized employment; violation of scope of activity; attempt of illegal departure; violation of foreigner registration obligation; and crimes subject to imprisonment. In these cases, a foreigner would be expelled, because the extreme illegality involved would cause harm to the security or public order of the Republic of Korea.

In 1995, 1,420 from a total of 3,564,539 foreign entrants were expelled. The procedure for expulsion and the method of instituting a complaint have already been described in the initial report.

Article 14

Paragraph 1

112. The content of Article 14, paragraph 1 of the Covenant is, as the initial report has observed, guaranteed under three Articles of the Constitution: Article 11, paragraph 1 of the Constitution provides that "all citizens shall be equal before the law"; Article 27, paragraph 1 of the Constitution states that "all citizens shall have the right to be tried in conformity with the law by judges qualified under the Constitution and the law"; and Article 27,

paragraph 3 of the Constitution stipulates that “the accused shall have the right to a public trial ... in the absence of justifiable reasons to the contrary.”

Independence of the Judiciary

113. In accordance with the principle of separation of powers, judicial power is vested in courts composed of judges (Article 101, paragraph 1 of the Constitution). The Constitution provides that “judges shall rule independently according to their conscience in conformity with the Constitution and law” (Article 103), and herewith the judges are to rule independently from various social influences including the Executive, the Legislature and the press.
114. To prevent interference by the administration in the judicature, qualifications for judges are determined by law (Article 101, paragraph 3 of the Constitution, Article 42, paragraph 2 of the Court Organization Act). Independence of personnel management in judicature is guaranteed by providing that the Chief Justice and Justices of the Supreme Court be appointed by the President with the consent of the National Assembly and that judges other than the Chief Justice and the Supreme Court Justices be appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices (Article 104 of the Constitution). The term of office and retirement age of judges are guaranteed by law (Article 105 of the Constitution), and at the same time, no judge is removed from office except by impeachment or by receiving a sentence heavier than imprisonment (Article 106, paragraph 1 of the Constitution). Thus, the judge’s independent status is fully guaranteed.

In a decision relating to the removal from office of a judge, the Constitutional Court has upheld the guarantee of the judge’s status and independence of the Judiciary by stating that “the independence of the

Judiciary signifies not only independent trials but also guaranteed status of a judge; guaranteed status is essential for the independence of judges at trials, and measures related to judges, i.e. removal, dismissal from office or disadvantages, not complying with legitimate legal procedures, are prohibited.” (Decision 91 HEONGA 2 of 12 November 1992)

Organization of the Court

115. The courts shall be composed of the Supreme Court, which is the highest court of the State and other courts at specified levels (Article 101, paragraph 2). Detailed organization of the above courts shall be determined by law (Article 102, paragraph 3 of the Constitution). In accordance with the provisions of the Constitution, the Court Organization Act provides for the High Court, District Court, Patent Court, Administrative Court, and Family Court.

In order to deal efficiently and specifically with patent and administrative cases, the legal foundation for the Patent Court and Administrative Court was established through a revision of the Court Organization Act on 6 December 1995. Their operations will start on 1 March 1998.

116. Considering the special characteristics of the armed forces, Article 110, paragraph 1 of the Constitution defines court martial as a special court distinguished from courts in general. The organization and competence thereof is prescribed by law.

In principle, the Court Martial exercises jurisdiction over military trials of individuals of special status such as soldiers and other military personnel. In exceptional cases involving crime of divulgence of important military secrets, crimes in regard to sentinels, sentry posts, supply of

harmful foods and beverages, prisoners of war, and military equipment as defined by the Military Penal Law, civilians may fall under the jurisdiction of the court martial (Article 27, paragraph 2 of the Constitution, Article 2 of the Court Martial Act).

The distinctive character of the Court Martial as a military institution, with regard to its establishment or jurisdiction, is recognized. Its operation, however, is very similar to that of ordinary judicial institutions, and its fairness is guaranteed. A military judge of the Court Martial, as ordinary courts, holds a lawyer's license and is appointed from judge advocates with guaranteed status. In addition, the Court Martial Act has provisions similar to those of the Penal Procedure Code to avoid infringement of fundamental rights of the accused in the process and administration of a military trial (Articles 48 to 533 of the Court Martial Act).

The principle of public trial and exceptions

117. A trial, in principle, has to be public. In the Constitution, Article 27, paragraph 3 provides that "the accused shall have the right to a public trial," and Article 109 states that "trials and decisions of the courts shall be open to the public, provided that when there is a danger that such trials may undermine the national security or disturb public safety and order, or be harmful to public morals, trials may be closed to the public by court decision." In case the court has decided to hold closed sessions for the above reasons, the reasons have to be stated in the protocol (Article 142 of the Civil Procedure Code and Article 51, paragraph 2 of the Penal Procedure Code). Even in these cases, the decisions naturally shall be made public.

Paragraph 2

118. Presumption of innocence is, as described in the initial report, explicitly provided for in Article 27, paragraph 4 of the Constitution and Article 275-2 of the Penal Procedure Code. Under this principle, the public prosecutor is obliged to prove the commission of a crime, and the judge may pass a guilty sentence only when there is sufficient evidence without any reasonable doubt. The Supreme Court made the observation that "conviction at a criminal trial requires evidence with probative value leading to the firm belief of the judge on the veracity of the facts constituting the crime, preclusive of any reasonable doubts; without evidence with this kind of probative power, it has to be decided to the benefit of the accused, even if the accused appears to be guilty" (Decision 92 DO 1405 of 1 September 1992).

Paragraph 3

119. The rights of the accused in a criminal trial were illustrated in detail in the initial report, but the following reforms have been made since the initial report was transmitted.

Subparagraph (b)

Provision of the right to communicate with the defense counsel and facilitation for preparation of defense

120. It was pointed out that the right to counsel of the arrested suspect was restricted in the investigative process of the Agency for National Security Planning. The Republic of Korea revised the Agency for National Security Planning Act on 5 January 1994 to provide a thorough guarantee of the right

to counsel. A provision was added that "agents of the Agency for National Security Planning engaged in investigative affairs shall comply with the procedure prescribed under Article 34 of the Penal Procedure Code guaranteeing the right of counsel" (Article 11, paragraph 2). Agents infringing upon the rights of the suspect or his or her defense counsel through violation of this provision are subject to punishment (Article 19, paragraph 2).

The revised Penal Administration Act of 5 January 1995 provides for more substantial guarantees of the right to counsel by precluding the presence of correction officials when a suspect is receiving his or her counsel. The Penal Procedure Code revised on 29 December 1995 recognizes rights the accused to inspect or copy, in addition to the protocol of public trial, documents or articles of evidence relating to the litigation pending in the courts.

On the right to counsel, it was expressed by the Supreme Court that "the right to counsel is indispensable for the protection of human rights and the preparation of defense of the accused or suspect placed under physical restraint. Unless it is restricted under the law, decisions by neither the investigative agency nor the court may restrict this right; in this case, interview with the counsel was arranged beyond the requested date, and this being equivalent to disapproval of the interview, the right to counsel has been infringed" (Decision 91 MO 24 of 28 March 1991).

Subparagraph (d)

Legal aid operations for criminal cases

121. In the Republic of Korea, the aforementioned Korea Legal Aid Corporation (KLAC) was established in 1987 to provide legal aid to the unprivileged for civil cases. Since 1 June 1996, legal aid services have been

extended to criminal cases. Therefore, if the accused in a criminal case is a farmer or fisherman, an individual eligible for livelihood protection, a worker with financial difficulties at livelihood, or a small-scale businessman, he or she may turn to the KLAC to appoint KLAC-registered lawyers or public judge advocates as defense counsel, free of charge, and obtain legal assistance (Article 5 of the Rules on Legal Aid Case Administration). A criminal defendant who cannot afford counsel, may not only apply to the court for defense counsel appointed by the State, but also turn directly to KLAC to obtain sufficient support of the defense counsel.

Introduction of the Public Judge Advocate System

122. The Public Beneficial Judge Advocate System was introduced in 1995 to have bearers of the lawyer's license (who have passed the bar examination and completed the training program at the Judicial Research and Training Institute), engage in legal aid operations in exchange for being exempted from military service. In the past, the above individuals were made to serve as common judge advocates or military police officers, but in order to utilize manpower specialized in legal affairs and to efficiently stimulate legal aid activities for the underprivileged, the relevant individuals are now engaged in legal aid operations of the KLAC with the status of public servants.

With the introduction of the above system, underprivileged citizens, unable to afford highly-paid private lawyers, can now turn to public beneficial judge advocates for legal consultations, and, when necessary, appoint public beneficial judge advocates as their counsel for civil or criminal cases. A public beneficial judge advocate, as a public servant, receives a salary from the State, and no fee whatsoever will be accepted from the client.

Subparagraph (e)

Right of the accused and his or her defense counsel to examine witnesses

123. The accused or his or her defense counsel may be present at the examination of a witness (Article 163, paragraph 1 of the Penal Procedure Code). Not wishing to be present at the examination of a witness, the accused or his or her defense counsel may make an inquiry to the court as to the matters examined during the interview. In case the testimony of a witness, given in the absence of the accused or his or her defense counsel, contains an unexpected and/or serious statement which is disadvantageous to the accused, the court shall give notice of the contents of such a statement to the accused or the defense counsel (Article 164 of the Penal Procedure Code).

Upon recognition that a witness cannot make a sufficient statement in the presence of the accused, however, the accused can be ordered to withdraw from the court to allow the witness to state his or her opinion. In this case, when the witness has finished his or her oral statement, the gist of the statement shall be announced to the accused by the court official after returning the accused to the courtroom (paragraph 297 of the Penal Procedure Code).

In case persons, who are deemed to know facts that are indispensable for the investigation, refuse to make an appearance or make statements at the request of a public prosecutor or judicial police officer, the public prosecutor may request judges for the right to question such persons as witnesses before the date of the first public trial. If it is deemed by judges that there is no obstacle to investigation, they shall have the accused, suspects or defense counsels participate in the interrogation of witnesses (Article 221-2, paragraph 5 of the Penal Procedure Code). The right to

examine witnesses are guaranteed herewith.

Subparagraph (g)

Notification of the right to remain silent and the right not to be compelled to testify

124. The right of the accused to remain silent is stipulated in Article 12, paragraph 2 of the Constitution and Article 289 of the Penal Procedure Code. A public prosecutor or judicial police officer is under obligation to inform a suspect in advance that he or she may refuse to answer questions (Article 200, paragraph 2 of the Penal Procedure Code). Moreover during proceedings, the presiding judge is required to notify the accused in advance that he or she may refuse to make statements (Article 127 of the Rules on Penal Procedure). The accused's right to remain silent has been fully guaranteed.

The Supreme Court has underlined the importance of prior notification of this right by finding that "in case an investigation agency has not notified a suspect in advance that he or she has the right of refusal of statement, probative value of a confession is to be denied as illegal evidence, even if the confession was voluntarily made." (Decision 92 DO 682 of 23 June 1992)

Paragraph 5

125. Part III of the Penal Procedure Code recognizes the right of accused to appeal to a High Court and to appeal to the Supreme Court after a High Court. Furthermore, according to Part IV of the Penal Procedure Code, the accused is entitled to a reopening of the case. The right of the accused to

appeal to a High Court and to appeal to the Supreme Court is also guaranteed in military trials. In case of military trials, the court of first, second and third instance shall be the ordinary court-martial, High Court-Martial and Supreme Court respectively. Military trials under an extraordinary martial law may not be appealed in the following cases (with the exception of death sentences): crimes committed by soldiers and employees of the military, crimes of military espionage, crimes as defined by law against sentinels, sentry posts, supply of harmful foods and beverages, and prisoners of war (Article 110, paragraph 4 of the Constitution, Article 534 of the Martial Court Act). These provisions aim for prompt recovery of the constitutional order under extraordinary martial law.

Paragraph 6

126. According to the Penal Compensation Act, the accused may apply for penal compensation not only in case of a not-guilty judgment in the regular penal procedure, but also a not-guilty judgment passed from the renewed procedure after the initial conviction. The amount of compensation allowed is equal to the sum explained in the comment on Article 9, paragraph 5 of the Covenant.

Paragraph 7

127. Article 13, paragraph 1 of the Constitution proclaims the principle of *ne bis in idem* by providing that “no citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed, nor shall he be placed in double jeopardy.” Cases in which a final binding judgment has already been rendered on a certain criminal act