Prohibition of cruel punishments

100. 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

101. The previous report affirmed that the prohibition of slavery, servitude, and 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 may be subjected to involuntary labour except as provided for by law and through lawful procedures.

102. 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 Labour 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 Labour Standards Act prohibit forced, excessive labour of women and minors.

103. 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.

104. 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.

105. All citizens of the Republic of Korea are required to take up the duty of national defence 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 for prisoners with penal labour sentences, the Penal Administration Act and related Regulations prescribe a defined working environment, a description 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

106. 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 peoples 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.

107. 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").

108. 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.

109. 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.

110. 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 ensuring protection against human rights abuses during the investigatory process.

Paragraph 2 - Notification of the reasons for arrest and related charges

111. 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 defence 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 Prosecutors 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

112. 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.

113. 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.

114. 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).

115. Restraint upon detention of prisoners on trial. 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".

116. 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 per cent in 1990 to 7.3 per cent in 1995. This trend of declining arrest rates is expected to continue.

117. With the aim of enlarging 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 suspects 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	Requests	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
1995	45 381	26 001	19 380	323

Paragraph 4 - Review of the legality of the arrest or detention

118. 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	19 201	5 245	4 474	482
1995	11 032	5 513	5 022	497

Paragraph 5 - Penal compensation

119. 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 in fact raised it 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 (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

120. 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.

121. 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 programmes 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. Explanations of major revised features of the Penal Administration Act will be explained in the subsequent chapters.

122. Improvement of basic treatment of inmates. The hair-cutting arrangements for 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). In the past, the cost of 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).

123. Extended visitation rights for inmates. 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.

124. 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 on Classification and Treatment of Prisoner).

125. Improvement of disciplinary measures against inmates. 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 the 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 (article 46, paragraph 2, of the Penal Administration Act).

126. Long-term prisoners. 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 offence 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.

127. 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 offence 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.

128. At correctional facilities, long-term prisoners are 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 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

129. 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.

130. Under article 62 of the previous Penal Administration Act, provisions regarding convicts were comprehensively applied, mutatis mutandis, to untried prisoners. The revised Penal Administration Act, however, distinguishes the application of law and the 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.

131. 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).

132. The Constitutional Court decided that "examination of correspondence between an unconvicted prisoner and defence counsel or to-be defence 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 to escape, destruction of evidence, discipline of the accommodation facilities, destruction of order" (92 HEONMA 144 of 21 July 1995).

133. 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 the Standard Minimum Rules for the Treatment of Prisoners, which state that "if [an untried prisoner] wears prison dress, it shall be different from that supplied to convicted prisoners". From January 1996 onward, the dignity of untried prisoners is protected by distinguishing their uniforms from those of convicts. As for convicts, the colour of men's and women's uniforms is indigo blue and gray respectively; as for untried prisoners, the men's clothes are brown and the women's are light green. As for self-provided clothes, various types of modern styles with comfortable and natural designs are allowed.

Paragraphs 2 and 3 - Coping with juvenile delinquents and separate accommodation

134. 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 ensure protection.

135. Juvenile delinquents brought to trial under ordinary penal procedures are accommodated completely separately 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.

136. Juvenile delinquents under arrest whose cases are classified as protective, are examined by the juvenile division of the court. A background history, intelligence quotient test and aptitude test are compiled at the Juvenile Classification Inspection Institute before the decision of the court, and after reflecting on the test results, the juvenile division of the court decides the type of protective measure such as accommodation in juvenile reformatory, protective surveillance, etc.

137. Juvenile offenders are also protected from harmful influence among juvenile offenders under article 8 of the Juvenile Reformatory Act, which provides that "persons under the age of 16 and above that age shall be accommodated separately".

138. Treatment of juvenile delinquents. Boys or girls accommodated in a juvenile reformatory are granted protection and correctional education according to the length of their sentence. The educational course depends upon the results of the classification examination by the Inspection Committee for the 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 enrolment in other educational institutions. Through public vocational training, vocational training reformatories enable juvenile delinquents to obtain technical skill licences in 17 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.

139. For well-behaved youths in 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).

140. Open prisons. 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 offence, 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.

141. Initially, open facilities of this kind were 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 expectation of adaptation to society may be accommodated in an open facility ... and be granted treatment perceived necessary for social life".

142. Modernization of vocational and technical training. 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 revised in accordance with the

demands of today's industry for modern technical skills. The technical education is concentrated on jobs in high demand including computer programming, car maintenance and construction skills, with the aim of educating a highly skilled individual capable of competing in the workforce.

143. Prevention of criminal influence through internment of convicts by category. In order to prevent criminal influence from spreading among convicts and to operate effective edification programmes, in April 1994 correctional facilities 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.

144. Establishment of the Life Guidance House for Future Parolees. For the efficient operation of the social rehabilitation training for convicts expecting parole, the "Life Guidance House for Future Parolees" was established in July 1994. To prevent a second offence, 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 future parolees have received social rehabilitation training.

Article 11

145. 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

146. The initial report already observed that freedom of residence and the right to move at will are 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.

147. 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.

148. 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.

149. 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 Enforcement Rules, a person may also be prohibited from leaving the country if that individual is a target of a 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.

150. 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

151. 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.

152. In 1995, 1,420 of 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

153. 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".

154. Independence of the Judiciary. 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" (art. 103), and herewith the judges are to rule independently from various social influences including the Executive, the Legislature and the press.

155. 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 the 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.

156. 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 the 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).

157. Organization of the Court. 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, of the Constitution). 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.

158. 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 the 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 licence 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).

159. The principle of public trial and exceptions. 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

160. 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 verdict 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

161. 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.

162. Subparagraph (b) - Provision of the right to communicate with the defence counsel and facilitation of preparation of defence. 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" (art. 11, para. 2). Agents infringing upon the rights of the suspect or his or her defence counsel through violation of this provision are subject to punishment (art. 9, para. 2).

163. 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 of 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.

164. 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 defence 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).

165. Subparagraph (d) - Legal aid for criminal cases. In the Republic of Korea, the aforementioned Korea Legal Aid Corporation (KLAC) was established in 1987 to provide legal aid to the underprivileged 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, or a small-scale businessman, he or she may turn to the KLAC to appoint KLAC-registered lawyers or public judge advocates as defence 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 defence counsel appointed by the State, but also turn directly to KLAC to obtain sufficient support of the defence counsel.

166. Introduction of the Public Judge Advocate System. The Public Judge Advocate System was introduced in 1995 to have bearers of a lawyer's licence (who have passed the bar examination and completed the training programme 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 this system, underprivileged citizens unable to afford highly paid private lawyers can now turn to pro bono publico judge advocates for legal consultations and, when

necessary, appoint pro bono publico judge advocates as their counsel for civil or criminal cases. A pro bono publico judge advocate, as a public servant, receives a salary from the State, and no fee whatsoever will be accepted from the client.

167. Subparagraph (e) - Right of the accused and his or her defence counsel to examine witnesses. The accused or his or her defence 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 defence 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 defence 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 defence 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).

168. 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 petition judges for the right to question such persons as witnesses before the date of the first public trial. If it is deemed by the judges that there is no obstacle to the investigation, they shall have the accused, suspects or defence counsels participate in the interrogation of witnesses (article 221-2, paragraph 5, of the Penal Procedure Code). The right to examine witnesses is thereby guaranteed.

169. Subparagraph (g) - Notification of the right to remain silent and the right not to be compelled to testify. 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 thus been fully guaranteed.

170. 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

171. Part III of the Penal Procedure Code recognizes the right of an 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 at prompt recovery of the constitutional order under extraordinary martial law.

Paragraph 6

172. According to the Penal Compensation Act, the accused may apply for penal compensation not only in case of a not-guilty judgement in the regular penal procedure, but also a not-guilty judgement passed in 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

173. 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 judgement has already been rendered on a certain criminal act and another indictment has been issued on the same act, the court shall dismiss that indictment (article 326, subparagraph 1, of the Penal Procedure Code).

174. The Republic of Korea made reservations on article 14, paragraph 7, at the time of ratification of the Covenant, but reservations were withdrawn on 21 January 1993 following the conclusion that there was no longer a substantial need for them to be maintained.

Article 15

175. Article 13, paragraph 1, of the Constitution prohibits *ex post facto* laws 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". Article 1 of the Criminal Code reconfirms the above principle and goes on to state that "when a law is changed after the commission of a crime, such act thereby no longer constitutes a crime under the new law, and in case the punishment under the new law is less severe than under the previous law, the new law shall apply. If a law is revised after a certain act is punished and if such act thereby no longer constitutes a crime under the revised law, the execution of the punishment shall be remitted".

176. Article 47, paragraph 2, of the Constitutional Court Act provides, to the same effect, that "if the law or articles are ruled unconstitutional, they shall lose their effect retroactively". In the event a guilty verdict was rendered under a law that has been ruled unconstitutional, the accused can request a retrial.

Article 16

177. The rights in article 16 of the Covenant are covered by article 10 of the Constitution, which provides that "all citizens shall be assured of human worth and dignity and have the right to pursue happiness; it shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights". The intentions of the Constitution are substantiated through relevant laws and regulations by reaffirming paramount respect for the rights of individuals.

178. Article 3 of the Civil Code provides that "all persons can enjoy rights and assume duties during their lives", and under certain circumstances, an unborn child is also capable of enjoying rights. The limited legal capability of an unborn child is addressed in article 762 of the Civil Code, which states that "an unborn child shall, in respect of its claim for damages, be deemed to have been already born". Furthermore, article 1000, paragraph 3, sets forth that "with respect to the order of inheritance, an unborn child shall be considered to have already been born". In addition, the Criminal Code stipulates crimes of abortion so that acts of abortion under certain circumstances can be prosecuted.

Article 17

179. Regarding legal provisions of the Republic of Korea related to article 17 of the Covenant, the initial report already stated that articles 16, 17 and 18 of the Constitution stipulate freedom of residence, protection of privacy and freedom of correspondence. The above articles have been incorporated in the Criminal Code, the Civil Code, the Minor Offence Punishment Act, the Postal Services Act, the Korea Telecom Act, etc.

The Act on Protection of Personal Information Regarding Public Institutions

180. Since 1983, the Republic of Korea has been advancing a master plan for a national computer network. The establishment of a nationwide administrative computer network has shortened the time required to issue papers and connect the national civil service, as well as made joint utilization of administrative materials among government agencies possible. On the other hand, personal information on the average individual in the form of electronic data has greatly increased over the same period, causing some problems such as leakage of electronic data which would likely lead to infringement of privacy. This situation has increased the need to ensure the protection of an individual's privacy.

181. In response to this need, the Act on Privacy and Protection of Individual Information Regarding Public Institutions was legislated on 7 January 1994. Under the Act, public institutions are prohibited from collecting data such as thoughts or beliefs of individuals (art. 4, para. 1)

that may infringe on fundamental human rights. Individuals may inspect data on themselves that have been processed, and demand that corrections be made for inaccurate information (art. 14). The act of leaking personal information or providing it for an another person's use is subject to punishment (art. 23, para. 2). Individuals or organizations other than public institutions are punished when they obtain processed data from a public institution by illegal means (art. 23, para. 3). As a result, information on individuals is protected to the highest degree.

Enactment of the Correspondence Privacy Protection Act

182. The Correspondence Privacy Protection Act was legislated on 27 December 1993 and carried into effect on 27 June 1994. This legislation is designed to protect the privacy of correspondence and to promote freedom of correspondence by requiring strict legal procedures in case of restricting privacy or freedom in correspondence and communication for the purposes of a criminal investigation, for example. Article 3 of the above Act prohibits in principle the examination of mail, tapping of telecommunications, and recording or listening to private conversations. If restrictive measures on correspondence are crucial and inevitable for crime investigations, the investigating agencies are required to obtain authorization from the courts (art. 5), while the intelligence agency must obtain authorization from the Chief Judge of the High Court or approval from the President in case unavoidable restriction upon correspondence is necessary for national security (art. 7).

Protection of correspondence under the Telecommunication Business Act and the Radio Waves Act

183. Under article 54 of the Telecommunication Business Act, no one, including persons who are or have been engaged in telecommunication services, shall violate or leak private correspondence. Furthermore, under article 42 of the Radio Wave Act, no one shall leak or use other people's secrets obtained through wireless correspondence, hence avoiding wiretapping and protecting freedom of correspondence.

184. In December 1991, the Telecommunication Business Act and the Radio Waves Act were revised to include more severe punishment of persons infringing upon other's freedom of correspondence.

Protection of freedom of residence in times of search

185. Police officers may enter other people's land or buildings in case of a criminal act or other extraordinary situations where danger to human life, body or property is apparent and such entrance is necessary to prevent danger or save the injured (article 7 of the Police Officer Duty Performance Act). Searching residences during a criminal investigation requires a warrant issued by a judge of the competent district court (article 215, paragraph 2, of the Penal Procedure Code). Insofar as is possible, the presence of third persons is required during the execution of search warrants. The aim is to fully protect the freedom of residence and, at the same time, preclude arbitrary interference by public authorities (articles 149 to 152 of the Rules on Investigation of Crimes).

Article 18

186. It was observed in the initial report that the Constitution sets forth the freedom of conscience and the freedom of religion in articles 19 and 20 respectively, the rights stated in article 18 of the Covenant providing for protection of the inner spiritual life of a human being being guaranteed thereby. Article 19 of the Constitution underlines freedom of conscience. The Constitution also stipulates that members of the National Assembly (art. 46, para. 2) perform their duties and that judges (art. 103) rule based on their conscience, respectively.

187. State authorities shall not intervene when individuals make their own decisions based upon their conscience. The State shall neither promote certain ideologies nor suppress ways and means necessary for citizens to freely cultivate their thoughts.

188. In regard to freedom of conscience, the Constitutional Court observed that "freedom of conscience includes not only the inner aspect but also freedom from coercion". Namely, the State shall not interfere in moral judgements such as right and wrong. Nor shall it coerce citizens to express their moral judgement (89 HEONMA 160 of 1 April 1991).

189. The Supreme Court provides substantial protection for the freedom of conscience by deciding that "keeping a diary with contents sympathetic to anti-State organizations, if it does not involve any actual effect in the outside real world, cannot be punished" (Decision 73 DO 3392 of 9 December 1975).

190. The Constitution has not clearly stated freedom of thought, yet freedom of conscience found in article 19 in the Constitution is interpreted to include freedom of thought.

191. The Republic of Korea tolerates individuals' thoughts of any kind, including, inter alia, communism, and the Juche ideology of North Korea. However, acts that endanger the existence and security of the State through agitation of violent revolution or attempts to overthrow the free and democratic system by carrying out these thoughts, is subject to punishment. Persons being punished due to the above acts receive correctional education in penitentiaries in order to guide them back to the free and democratic society. Conversion of thought, however, is left to their own free will.

192. In addition to the provision of freedom of religion in article 20, paragraph 1, the Constitution states in article 20, paragraph 2, that "no State religion shall be recognized, and religion and politics shall be separated". Article 5, paragraph 2, of the Education Act provides that "national and public schools shall not be allowed to carry on religious education for the sake of a religion". This signifies that no State religion could exist under the constitutional order of the Republic of Korea, where freedom of religion is guaranteed. The State is prohibited from adopting a policy that interferes in religion or treats certain religions preferentially. Political activities of religious organizations are also forbidden. However, individual involvement in political activities directly or through participation in a separate association is allowed.

193. Religious neutrality of the State, as underscored in the Constitution, is not merely a logical conclusion of the freedom of religion. It highlights the function of freedom of religion in an objective order of values by clarifying the equality of religion and prohibiting sacralization of politics and politicization of religions.

194. At present, various religions, including Buddhism, Protestantism, Roman Catholicism and Won Buddhism, coexist in the Republic of Korea; Buddhism and Protestantism are among the largest in terms of number of followers. No regional peculiarity can be perceived, and all religions are equally distributed nationwide.

Article 19

195. It was already observed in the initial report that the rights under article 19 of the Covenant are covered by articles 19, 21, 22 of the Constitution and relevant laws such as the Broadcast Act. Rights regarding freedom of expression provided in article 19, paragraph 2, of the Covenant are respected to the maximum degree as the core of spiritual freedom and cornerstone of a democratic society. However, considering the social aspect of the freedom of expression, and unlike the right to hold opinions in article 19, paragraph 1, of the Covenant or the right to freedom of thought in article 18 of the Covenant, the freedom of expression has its own inherent limits. As for the limits, article 21, paragraph 4, of the Constitution provides that "neither speech nor the press shall violate the honour or rights of other persons nor undermine public moral or social ethics". In addition, the following legislation makes clear the special obligation and responsibility involved in the exercise of the above right: provisions on distribution of obscene materials etc. (article 243 of the Criminal Code), defamation through printed materials (article 309 of the Criminal Code), prohibition of propaganda on agitation, insurrection and foreign aggression (article 90, paragraph 2, and article 101, paragraph 2, of the Criminal Code), prohibition of broadcasts advocating a certain political party or group (article 5, paragraph 3, of the Broadcast Act) and prohibition of agitation and destruction of national public order (article 7, paragraph 1, of the National Security Law). These should be deemed the necessary minimum restrictions.

Presentation of periodicals to the authorities and freedom of expression

196. Article 10 of the Act Relating to the Registration of Periodicals prescribes that when a periodical is published, two copies shall be delivered to the Minister of Public Information. This delivery is merely an administrative confirmation of publication and not a restriction prior to the publication of a periodical. The Act Relating to the Registration of Periodicals stipulates sanctions in case some basic information is not printed as registered. This information (for example, the title, publisher, etc.) should be printed as registered and not altered at will. The delivery of books to the Ministry of Public Information is required to decide whether those provisions are being observed.

197. Concerning the constitutional status of this periodical inspection system, the Constitutional Court has decided that "the delivery system does

not signify pre-censorship on speech and press, therefore does not infringe freedom of speech and freedom of press. The fine prescribed to guarantee an effective delivery system is reasonable and therefore not unconstitutional" (Decision 92 HEONBA 26 on 26 June 1992).

Review of works of expression

198. Performances, motion pictures and video works must be reviewed by the Performance Moral Committee instituted by article 25-3 of the Performance Act. The Performance Moral Committee consists of 18 persons from various circles of society including the arts, the press, publishing, and education; all members being civilians, this Committee is an independent organization.

199. The Performance Moral Committee, using guidelines such as the protection of the basic constitutional order, maintenance of public order, protection of public morals, protection of children and youth, and sexual morality in family life may minimally restrict the presentation or release of performances for reasons of national security, public order and public morals. The review of the Performance Moral Committee in 1995 has resulted in the following.

	Total	Passed	Censorship required	Rejected
Stage performances	2 419	2 419	none	none
Motion pictures	839	627	182	30
Video works	4 855	3 816	881	158
Advertisement	19 014	16 508	2 092	414

200. In the past, musical recordings were also reviewed by the Performance Morals Committee. But with the possibility of records damaging good public order and customs being small, the necessity of reviewing of records was considered insignificant. As a result, the revised Act relating to Records and Video Works of 6 December 1995 prescribes review on demand only.

Present situation of periodicals and broadcasting companies

201. As of February 1996, a total of 9,893 periodicals (i.e. 149 daily, 2,920 weekly, 3,748 monthly, 900 bimonthly, 1,473 quarterly, 378 biannual and 325 annual periodicals) are registered in the Republic of Korea. As for broadcasting, 14 radio and television broadcasting stations and 53 comprehensive cable television broadcasting corporations exist. Twenty-eight licensed companies are supplying the programmes.

Guarantee of neutrality of broadcasts

202. The Broadcast Act, in addition to the guaranteed freedom of broadcast programming, emphasizes the public nature of broadcasting in article 5 by stating that "News broadcasts shall be impartial and objective; the broadcast shall not support or advocate a certain political party, group, interest, belief or thought". Article 31 decrees that "the broadcasting programme shall be drawn up so that each field of interest, i.e. political, economic, social, cultural, etc., may be expressed harmoniously in a proper ratio", so that broadcasting equally reflects the voice of every citizen and is not being partial to a certain interest or group. The neutrality of broadcast is also guaranteed from the aspect of organization of the broadcasting corporations. This neutrality has been instituted so that persons from various circles including academia, the press, legal professions, and those who are politically and socially neutral, will be selected as members of the executive board.

The National Security Law and freedom of expression

203. The National Security Law was enacted on 1 December 1948 to both cope with North Korean manoeuvres to destroy the Republic of Korea and protect the democratic system that guarantees life and freedom for the people living under the special situation found on the Korean Peninsula. The above Law has undergone eight revisions, and its contents have been supplemented and improved not only to protect national security, but also to prevent human rights violations. During the seventh revision on 31 May 1991, a declaratory clause was inserted to provide that "construction and application of the National Security Law shall remain at the minimal level, and shall not extend the interpretation or wrongfully restrict fundamental human rights of citizens guaranteed under the Constitution" (art. 1, para. 2). Also, provisions likely to cause encroachment on human rights were fully reviewed.

204. As for article 7 of the National Security Law, which concerns praising, encouraging and propagating anti-State organizations and producing or distributing materials for the benefit of an anti-State organization, a phrase of subjective condition was added (i.e. "taking cognizance of the endangerment of the existence and security of the State or the principle of freedom and democracy"). The application of this article became more strict and specific, compared with other penal laws such as the Criminal Code.

205. Above all, all the concepts in the National Security Law, since its enactment 50 years ago, have been clearly defined through the jurisprudence of the Supreme Court, the decision of the Constitutional Court and some academic theories. This has diminished the chances of the law being subjected to arbitrary interpretation. As a consequence, abuse by investigation agencies is almost out of the question. The Constitutional Court has firmly defined that "endangerment of the existence and security of the State signifies threatening and infringing the independence of the Republic of Korea, intruding on its territory, destroying and paralysing the function of the Constitution, laws and constitutional institutions; endangerment of free democratic basic order means complicating the self-governing of the people through [...] violent and arbitrary rule and the suppression of the united constitutional order based on freedom and equality".

206. The purpose of article 7 of the above Law is not intended for punishment of those who study or simply profess communism or the Juche ideology. Rather, it is for cases in which such expressions of thought exceed the inherent limits and incite anti-State activities i.e. agitation of violent revolution or assertion of overthrowing the free and democratic system. Therefore, the above article does not constitute an infringement upon the freedom of expression.

207. It was pointed out that the objectives of the National Security Law could be achieved under the crime of espionage, etc. of the Criminal Code, if the National Security Law were to be abolished. However, the present system of law of the Republic of Korea, starting from the Constitution (art. 3), does not consider North Korea as a State, so the crime of spying in the Criminal Code involving an "enemy country" is not applicable, making a special law called the National Security Law necessary.

208. North Korea has persistently adhered to the communization of the Republic of Korea based on revolutionary ideas of so-called "single Chosun" in the covenant of its Labour Party and Socialist Constitution. The National Security Law is a special law in force that is a minimum legal instrument required to safeguard the national security against the strategies of North Korea.

Article 20

Stipulation of the Constitution and laws on the pursuit of peace and the prevention of war

209. The Constitution is based on the ideal of the pursuit of peace. To realize this goal, "the mission of ... peaceful unification of our homeland" is emphasized and the will to "contribute to lasting world peace and the common prosperity of mankind" is expressed in the preamble to the Constitution. Article 5, paragraph 1, of the Constitution also provides that "the Republic of Korea shall endeavour to maintain international peace and shall renounce all aggressive wars".

210. A person who agitates to commence hostilities or propagates war against the Republic of Korea in conspiracy with a foreign country or to spy for an enemy country is punished under article 101, paragraph 2, of the Criminal Code. A person who propagates war between other States in violation of neutrality orders is punished under article 112 of the Criminal Code.

Efforts of the Republic of Korea in pursuit of peaceful unification under the particular circumstances in South-North relations

211. The Republic of Korea, unlike other nations, has greatly suffered from division. To overcome this reality, the Republic of Korea has set unification as the ultimate national task and has consistently pursued the principle of peaceful unification founded upon the basic order of free democracy. Article 4 of the Constitution stipulates that "the Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on a free democratic order". Article 66, paragraph 3, states that "the President shall have the duty to faithfully pursue the

peaceful unification of the homeland". The nation's resolve to achieve peaceful unification is also declared in article 92, paragraph 1, which provides that "an Advisory Council on Democratic and Peaceful Unification may be established to advise the President on the formulation of peaceful unification policy".

212. The Government has made endless efforts towards peaceful unification. On 1 August 1990, the Law on Exchange and Cooperation between the South and the North was enacted to regulate traffic, trade, cooperative projects, and provisions for communication services between the South and the North. The foundation for peaceful unification was strengthened with simultaneous accession of both sides to the United Nations in September 1991. On 19 February 1992, the Agreement on Reconciliation, Non-aggression, Exchange and Cooperation between the South and the North was reached. It clearly described that "aggression and conflict using force should be avoided, and the relaxation of tension and peace should be guaranteed". In particular, article 3 of the Agreement expressed that "the South and the North shall neither libel nor defame each other". Article 9 sets forth that "the South and the North shall not use force against each other and not aggress each other by using force", while article 10 declares that "the South and the North have to solve peacefully differences in opinion and contentious problems through dialogue and negotiation". All these provisions have provided a foundation from which war can be prevented on the Korean Peninsula. Moreover an "Attached Agreement for Execution and Observance of South-North Reconciliation" has been arranged. For the implementation of these Agreements, North-South dialogue should be resumed as soon as possible.

Article 21

213. As the initial report mentioned, article 21 of the Constitution protects the freedom of assembly by providing that "all citizens shall enjoy freedom of assembly. Permission of assembly shall not be recognized". However, the Act Concerning Assembly and Demonstration has been legislated to guarantee peaceful assembly and demonstration and protect citizens from illegal violent assemblies. The Act prohibits assemblies or demonstrations which represent a clear threat to public peace and order through mass violence, intimidation, destruction and arson, or which intend to achieve the objectives of a political party dissolved by a decision of the Constitutional Court (art. 5). Open-air assemblies or demonstrations before sunrise or after sunset (art. 10) and open-air assemblies or demonstrations held in public places such as the National Assembly building and the Court, or on main roads (forbidden or restricted under the presidential decree due to traffic congestion), are prohibited for the maintenance of order.

214. A person who intends to hold an assembly does not need permission from the authorities, but in case of open-air assemblies or demonstrations, reporting to the chief of the relevant police station is required for administrative purposes. A person intending to hold an open-air assembly or demonstration must submit to the relevant police station, at least 48 hours prior to the assembly or demonstration, the necessary papers referring to the purpose, date and time, place, sponsor, contact person, name-address-vocation of the person responsible for the organization, the number of people expected to participate, and the method of demonstration (art. 6). The police station

chief receives the application and uses it for administrative reference. For example, if the assembly or demonstration in the application is prohibited under the Act Concerning Assembly and Demonstration, the police chief may notify the sponsors of this fact within 48 hours from the time of application. This notification does not imply permission for assemblies or demonstrations by the chief of police. The police chief is simply drawing the attention of the organizers to the fact that certain assemblies are forbidden under relevant laws.

215. In the Republic of Korea, the radical and violent demonstration atmosphere formed under the military regimes of the past has yet to completely vanish. Some demonstrations lead to the occupation of traffic lanes in city centres, the use of firebombs and stones, and attacks on public offices. For this reason, the police review the purpose of the assembly or demonstration, the sponsors previous record of violent demonstration, the inclination of the participants, the ability of the sponsors to control the participants, and the likelihood of firebombs. If it is deemed most likely that the demonstration will turn violent, the organizers are notified that it is not allowed under the Act Concerning Assembly and Demonstration. This is not due to the anti-Government nature of the assembly or demonstration, but only because of the anticipated violence.

Article 22

Guarantee of freedom of association

216. Article 21 of the Constitution guarantees the general freedom of association and prohibits prior control over association by providing that "all citizens shall enjoy freedom of association ... giving permission to associations shall not be admitted". In addition, article 33, paragraph 1, guarantees freedom of association of workers by stating that "to improve working conditions, workers shall have the rights of organization, collective bargaining and collective action". To guarantee workers' rights to organize, article 8 of the Labour Union Act provides that "employees (who live on wages, salaries and/or other income) may freely organize or join labour unions". This allows two or more workers to organize any kind of a labour union. Article 39 of the Act prohibits management from dismissing an employee for his or her involvement in the organization and rightful participation in the activities of a trade union. This article also forbids management from interfering in the operation of a labour union or rejecting a request for collective negotiation from a labour union. The worker or union can bring a case of unfair labour practice on the part of the employer to a labour committee composed of representatives from labour, management and public interest groups. The committee may grant relief and recommend criminal punishment of the employer.

Restrictions upon freedom of association

217. Freedom of association may be restricted by law if absolutely necessary for national security, the maintenance of law and order or for public welfare. Article 37, paragraph 2, of the Constitution describes the general principle of restricting basic rights. Article 33, paragraph 2, of the Constitution provides that only those public officials who are designated by law shall have

the rights to organization, collective bargaining and collective action. In accordance with this clause, the Labour Union Act and the National Civil Service Act restrict the above-mentioned rights in regard to public servants. The scope of and reasons for these restrictions are stated in the initial report.

218. Article 66 of the National Civil Service Act and article 55 of the Private School Act prohibit the organization of teachers' unions. Teachers share common attributes of other workers from the viewpoint that they engage in educational affairs and receive salaries in return. Due to the public and moral dimension that education contains, however, teachers bear the same social responsibilities as other public servants, and this special character of teachers' function is deeply rooted in the minds of the people of the Republic of Korea. Moreover, the prohibition of teachers' unions guarantees citizens' rights to education and maintains the nature of the education system for the benefit of the public, given the fact that the work relationship of teachers cannot be considered the same as that of common workers.

219. As a practical measure to guarantee teachers' rights to organize, article 80 of the Education Act provides that "teachers may organize Education Associations at central as well as local levels for the purpose of ... promoting their own economic and social status". The Special Act for Improvement of Status of Teachers, effective as of 31 May 1991, provides in articles 11 and 12 that the Education Association can negotiate with or consult with the Minister of Education or the Superintendent of Educational Affairs on the improvement of treatment and work conditions for teachers.

220. Regarding the Private School Act, which prohibits the organization of private school teachers' unions, the Constitutional Court decided that since private school teachers can promote their economic and social status through the Education Association, restrictions or prohibition of the exercise of workers' three basic rights (rights to association, collective bargaining and collective action) cannot be said to have violated the essential aspects of their basic rights. These restrictions are not unconstitutional because the legislator has determined that they are necessary and adequate to maintain the nature of the educational system in the interest of the public, and considering in full the special character of teachers' status and historical realities of this nation (Decision 89 HEONMA 106 of 22 July 1991).

221. In a decision on article 66, paragraph 1, of the National Civil Service Act restricting the three basic labour rights of public servants, the Constitutional Court stated that "this provision prohibiting labour movements by public officials except for those by actually engaged in labour does not violate the Constitutional provision of equality" (Decision 92 HEONBA 1 of 28 April 1992).

222. Article 3, item 5, of the Labour Union Act stipulates that a planned labour union will not be approved in case it has the same organizational objective as an existing labour union, or if it aims to interfere with the normal operation of such a union. This provision has taken into account the fact that most of the labour unions are established on an enterprise basis in the Republic of Korea. It is feared that the existence of two or more unions aiming for the same group of workers who are already members of a union could

result in troubles, such as the disintegration of a labour union, weakened negotiation capabilities, complication of the negotiating process, and disputes among workers and between workers and employers. The terms of the Labour Union Act are designed to avoid these developments.

Accession to ILO

223. On 9 December 1991, the Republic of Korea became a member of the International Labour Organization, the last United Nations specialized agency for the Republic of Korea to join. Since 16 June 1996, the Republic of Korea has been participating more vigorously in its affairs as a member of the Council. After accession to the ILO, the Government has been exerting greater efforts to promote workers' rights and enhance international cooperation in the field of labour.

Revision process of the labour-related laws

224. In 1987, the present Labour Union Act underwent a major revision in keeping with the general trend of democratization of society. Such restrictive provisions as limitations on the establishment of labour unions were eliminated to guarantee a free and independent labour movement. Since then, suggestions have continuously been made by various social sectors on matters that either do not meet the current industrial realities or could possibly restrict workers' rights. In particular, confrontation between labour and management over the issues of multiple labour unions, ban on third party intervention, replacement of striking workers, flexible working hours system and dismissal for managerial reasons has made a reasonable compromise an elusive task. In March 1996, the Government launched the Presidential Committee on Labour Reforms composed of individuals from various fields including employees, employers, scholars, etc. This Committee aims at reforming industrial relations through revisions in labour-related laws and restructuring of the labour administration organizations.

Registration of political parties

225. The initial report already stated that a political party, in view of its importance, is given special protection under the Constitution. In order for an organization to be registered as a political party eligible for such protection, it should secure sub-organs necessary to form citizens' political opinions. According to the Political Party Act, for an organization to be registered as a political party, it must be composed of a central party and district chapters equal to a tenth or more of the total regional electoral districts for the National Assembly members (art. 25) with adequate geographical distribution (art. 26). When the requirements are no longer satisfied, the Central Election Management Committee revokes, ex officio, its registration (article 38, paragraph 1, of the Political Party Act), and the organization is denied the status of a political party. Also, when the party fails to win a seat or get more than two hundredths of the total effective votes in the general elections for National Assembly members, the Central Election Management Committee revokes its registration.

226. As of June 1996, seven political parties were registered. They include the New Korea Party (151 National Assembly members), the National Congress for

New Politics (79 members), the United Liberal Democrats (49 members), the Democratic Party (12 members), the United National Non-Political-Factionalists, the Christian People's Party, and the Unified Korean Party.

227. One change has been made in relation to accession to a political party. Members of the press are now permitted to join parties, whereas in the past, members of the press were denied admission in order to maintain the political neutrality of the press. The revised Political Party Act of 27 December 1993 allows, without any restrictions, these individuals to join political parties (article 6 of the Political Party Act).

Article 23

Paragraph 1 - Protection of families and homes

228. Article 36, paragraph 1, of the Constitution provides that "marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal". Men and women, of their free will, are supposed to maintain a democratic family system on an equal footing.

229. Article 779 of the Civil Code prescribes who constitutes members of the family, notably the spouse of the head of a family, blood relatives (lineal ascendants and lineal descendants, brothers and sisters, lineal descendants of brothers/sisters, brothers/sisters of lineal ascendants, lineal descendants of brothers/sisters of lineal ascendants) and their spouses. But in the social sense, the concept of a family is understood as a sphere centred around a married couple where close blood relatives live together and lead a joint life based on love and caring. The family is considered the most basic unit of society.

230. In the past, the family system of the Republic of Korea had the rather conservative character of a traditional Confucian patriarchy. With the progress of industrialization, urbanization and increased social participation of women, however, the nuclear family composed of the couple and their children replaced the extended family as the common base unit, and the family system has assumed a more democratic character respecting the dignity of each individual and equality of the sexes. It has already been stated in the initial report that the Civil Code was revised on 13 January 1990 to support this trend.

Paragraphs 2 and 3 - System of marriage

231. Under articles 800, 801, 807 and 808 of the Civil Code, any adult may freely enter into a matrimonial engagement and marry. A minor also can enter into a matrimonial engagement and into matrimony with the consent of his or her parents or guardian if he has attained 18 years of age or she has attained 16 years of age.

232. As for marriage, monogamy is guaranteed where two individuals join of their own free will; bigamy is prohibited by article 810 of the Civil Code. An application can be made to the court for an annulment of marriage when marriage was induced by fraud or duress and in cases of bigamy.

233. Marriage among close relatives is forbidden from the dysgenic point of view and traditional ideas influenced by Confucianism. Article 815 of the Civil Code declares null and void a marriage between lineal blood relatives, and collateral blood relatives within the range of third cousin. As for marriage between individuals who share the same surname and family origin, an application to the court for an annulment of that marriage may be made under article 816 of the Civil Code. There are dissenting opinions on the prohibition of marriage between individuals who share the same surname and place of origin; the possible abolition of that provision is being studied.

234. The place where a husband and wife live together shall be determined by an agreement between them (article 826, paragraph 2, of the Civil Code). The couple shall exercise the right of proxy for each other in daily household matters (article 827, paragraph 1, of the Civil Code), and the living expenses of husband and wife shall be borne jointly by them, unless a special stipulation has been made between them (article 833 of the Civil Code).

235. Husband and wife may seek divorce by agreement or unilateral application to the court. In 1994, the number of marriages and divorces reported were 304,146 and 50,960 respectively.

Paragraph 4 - Rights of the spouse

236. It was already mentioned in the initial report that the present Civil Code, effective from 1 January 1991, provides for equal rights and duties between husband and wife through joint exercise of parental authority with respect to a minor child; elimination of discrimination at inheritance; and the right to demand division of properties. Furthermore, the inheritance law was revised in December 1994. Through this revision, the criteria for gift tax and inheritance tax deductions for spouses were upgraded by a very wide margin. This signifies the recognition of reasonable property rights upon jobless spouses.

Article 24

Paragraph 1

237. It has already been confirmed in the initial report that prohibition of discrimination against children and the protection of children are duly guaranteed under article 11, paragraph 1, article 31, paragraph 2, and article 32, paragraph 5, of the Constitution, in addition to relevant provisions of the Child Welfare Act, the Labour Standards Act and the Education Act. Some additional comments will be made below.

238. Accession to the Convention on the Rights of the Child. The Republic of Korea, joining in the United Nations effort to protect children, deposited the instrument of ratification for the Convention on the Rights of the Child with the Secretary-General of the United Nations on 20 November 1991. The first report transmitted on 30 November 1994 was examined by the Committee on the Rights of the Child in January 1996.

239. Protection of working children and decrease in the number of working children. The initial report observed that article 32, paragraph 5, of the Constitution provides that "special protection shall be accorded to working

children," and that in accordance with this provision, the Labour Standards Act sets out restrictions on the working hours of children (arts. 55, 56) and prohibits the engagement of children in any harmful or dangerous work (arts. 51, 58). Moreover, in order to prevent economic exploitation of children, article 53 of the Labour Standards Act states that no parent or guardian shall be authorized to make an employment agreement on behalf of a minor: if the employment agreement may be deemed disadvantageous to a minor, the parent, guardian or the Minister of Labour may terminate it. For the observance of special provisions on child protection, 45 local labour agencies nationwide guide and supervise workplaces with more than five workers.

240. In response to these special protection clauses and increased school attendance of children, the ratio of children under 18 in workplaces with more than five full-time workers has dropped tremendously from 2.8 per cent (90,625 out of 3,219,442 total workers) in 1980 to 0.4 per cent (23,916 out of 6,167,596 workers in total) in 1995.

241. Responsibility of parents to protect children and respect for the child's views. Parents are responsible for raising children. Article 909, paragraph 1, of the Civil Code stipulates that "the child who is a minor, shall be subject to the parental authority of parents". Article 913 provides that "a person in parental authority shall have rights and duties to protect and educate his or her child". In case a person of parental authority abuses that authority or is guilty of gross misconduct, or there exists any other cogent reason for not allowing him or her to exercise parental power, or if a person in parental authority endangers his or her child by mismanagement of the child's property, the court may adjudge his or her loss of parental authority and the right of the management of the property of the child (articles 924 and 925 of the Civil Code). When the person with parental authority is representing a child on occasions in which an obligation is to be assumed requiring any act of the child, the consent of the child shall be obtained (article 920 of the Civil Code). Also, a minor with the ability to express his or her own thoughts, may conduct business acts with the approval of his or her parental authority (article 5 of the Civil Code). When the parents cannot reach agreement on matters concerning custody in cases of legal separation, a child who is more than 15 years old is consulted as to which parent he or she wishes to stay with. In case of adoption of a child aged 15 or over, the child shall not be adopted without his or her own consent.

242. Accommodation for children in need of protection. Some facilities are required to provide social protection to children who are abandoned or whose protectors are not qualified to raise them. Article 12 of the Child Welfare Act stipulates necessary protective measures for this type of child. As of 31 December 1995, 18,074 children were accommodated in 269 protective facilities.

243. Protection of children under the Minor Protection Act. The Minor Protection Act was legislated in 1961 to guide and care for minors. This Act aims to protect minors by stipulating necessary details and by prohibiting minors from smoking, drinking, and activities against social virtue. In accordance with this Act, minors are prohibited from smoking and drinking and

from gaining access to certain places including saloon bars and gambling houses. Minors are also not permitted to go into areas designated by the police as off-limits, to prevent misdemeanors by minors.

244. Protection of minors from violence, maltreatment and sexual exploitation. The Criminal Code strives to protect minors from sexual exploitation and violence. Article 287 provides that "a person who kidnaps a minor by force or inveiglement shall be punished by penal servitude for not more than ten years". Article 242 states that "a person who, for the purpose of earning profit, induces a minor to engage in sexual intercourse, shall be punished by penal servitude for not more than three years or by a fine not exceeding 15 million Won (approximately US$ 19,000)". Article 34 of the Child Welfare Act stipulates punishment for the following acts: forcing a child to perform obscene acts or mediating such activity; having a child under 14 engage in entertaining activities in certain places, including saloon bars; making a child beg; and maltreating a child who is under his or her protection or supervision.

245. Protection of children born out of wedlock. The Civil Code provides equal protection for legitimate and illegitimate children. Children born out of wedlock are protected at first by the establishment of legal family relations. This is established through the recognition of the natural father or mother (articles 855 and 859 of the Civil Code). In case it is not possible to obtain recognition, a child may bring a suit against his or her natural father or mother to demand recognition (article 863 of the Civil Code). Recognition shall be effective retroactively as from the time of birth (article 860 of the Civil Code). As a consequence of establishing a family relationship, illegitimate children are treated equally with legitimate children in support and inheritance. A child born out of wedlock shall be deemed to be a child born during marriage from the time his or her parents marry (article 855 of the Civil Code).

Paragraph 2 - Name of the child

246. Concerning the registration and surname of a child, the Civil Code provides that a child shall take his or her father's surname, the family origin, and enrol in the father's family registry. In the case of a child whose father is not recognized, his or her mother's surname and family origin are taken, and the child is enrolled in the mother's family registry. However, a child whose father and mother are unknown, with approval of the court, may create a new surname and origin of surname, and establish a new family.

247. Article 49 of the Family Registration Act requires reporting of birth within one month. A birth report is established by submitting application papers to the administrative office at the place of birth. For in-wedlock births, the child's father or mother has the obligation to file a birth report. For birth out of wedlock, the child's mother is responsible for the birth report (article 51 of the Family Registration Act). As for foundlings, the head of the relevant local administrative office shall, upon authorization of the court, establish a surname and place of origin, and decide on a name and address under which the child is to be registered (article 57 of the Family Registration Act).

Paragraph 3 - Nationality of the child

248. Children born out of wedlock, foundlings discovered in the Republic of Korea and children of the stateless acquire the nationality of the Republic of Korea in accordance with article 2 of the Nationality Act. Therefore, the following persons shall be nationals of the Republic of Korea: a person whose father is a national of the Republic of Korea at the time of his or her birth; a person whose father has died before his or her birth and who was a national of the Republic of Korea at the time of death; a person whose mother is a national of the Republic of Korea, if his or her father is unknown or has no nationality; a person who is born in the Republic of Korea and whose parents are unknown or have no nationality (art. 2, para. 1). In addition, all foundlings discovered in the Republic of Korea shall be presumed to have been born in the Republic of Korea (art. 2, para. 2).

Article 25

249. The principle that sovereignty resides in the people is declared in article 1, paragraph 2, of the Constitution, which stipulates that "the sovereignty of the Republic of Korea shall reside in the people, and all State authority shall emanate from the people". Under this principle, citizens are entitled to directly participate in the formation of the national will through: provisions on national referendums on important policies relating to the national destiny (article 72 of the Constitution); proposed amendments to the Constitution (article 130, paragraph 2, of the Constitution); indirect participation in public duties through representatives elected by exercise of the right to vote (article 24 of the Constitution); and the exercise of their right to hold public office (article 25 of the Constitution).

Overall local elections

250. With regard to the performance of public duties through the exercise of the right to vote, one of the major changes in the Republic of Korea is the election of the head and council members of local governments. The establishment of local autonomy to assure participation of local residents in local administration was carried out in the Republic of Korea from 1949 to 1961. This practice was suspended, however, during the military regime and not renewed until arrangements were made for the direct election of local council members in 1991. This was extended to heads of local governments, resulting in the complete restoration of the citizen's right to participate. Elections were held on 27 June 1995 under the Public Office Election and Unfair Election Prevention Act for the following government offices: head of the local government, i.e. a Special City, 14 metropolitan cities and provinces; 230 primary areas of Shi (city), Kun (county) and Ku (borough); and for a total of 5,715 local council members, i.e. 931 greater area-level and 4,541 primary area-level elections.

Enactment of the Public Office Election and Unfair Election Prevention Act and its main contents

251. The Public Office Election and Unfair Election Prevention Act was legislated and promulgated on 16 March 1994 to provide a legal basis for the prevention of unfair elections. It also aims to promote better understanding

of the electoral system and to balance the administration of each election through the systematization of diverse acts such as the Presidential Election Act, the National Assembly Member Election Act, and the Local Council Members Election Act into a single election legislation. The Act states in article 1 that "the purpose of this Act is to hold fair elections in accordance with the free will of the citizens and democratic procedures, and to contribute to the development of democratic politics through the prevention of election-related unfairness". It stipulates, in detail, various matters concerning the method and procedures to be followed during election.

252. The right to vote is granted to citizens over the age of 20. The minimum age for electoral eligibility for citizens is 40 for President and 25 for members of the National Assembly, local councils and head of local government. However, the right to vote and electoral eligibility are denied to individuals ruled to be incompetent by the court or who have not finished serving a sentence no less severe than imprisonment.

Guarantee of universal, equal, direct and secret ballot

253. Article 41, paragraph 1, and article 67, paragraph 1, of the Constitution declare the principle of universal, equal, direct and secret ballot. The concrete terms for application of the principle can be found in the Public Office Election and Unfair Election Prevention Act which stipulates the exercise of a single vote per person (art. 146) and the guarantee of secrecy (art. 167).

254. Regarding the equal ballot, the Constitutional Court has expressed the opinion that "according to the constituency chart of the Public Office Election and Unfair Election Prevention Act, 'Haeundae-ku, and Kijang-kun Constituency of Pusan city' and 'Kangnam-ku B-Constituency of Seoul' exceed the nationwide constituency average of 175,460 inhabitants by more than the allowed 60 per cent variation, and therefore, demarcation of the two constituencies, as a derogation of the legislative discretion of the National Assembly and violation of voter equality principle, is unconstitutional".

Article 26

255. The preamble to the Constitution states that "We the people of Korea ... [have] determined to ... afford equal opportunities to every person ... in all fields, including political, economic, social and cultural life". Meanwhile, article 11, paragraph 1, of the Constitution provides that "all the citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status". Equality before the law and equal protection of law is made clear in those provisions.

256. Concrete contents have already been illustrated in detail in the relevant sections of the initial and this report, inter alia, the section on article 2 of the Covenant.

Article 27

257. In the Republic of Korea, as already mentioned in the initial report, every individual enjoys the right to appreciate one's own culture, to profess and practise one's own religion and to use one's own language. Although the minorities in the strict sense of article 27 of the Covenant do not exist in the Republic of Korea, nationalized overseas Chinese or other non-Korean nationals in the Republic of Korea enjoy their respective culture, religion and language, in accordance with the Constitution and the Covenant.

258. In November 1991, the Republic of Korea ratified the Convention on the Rights of the Child. With the acceptance of obligations in regard to provisions on protecting the rights of minority or native children (article 30 of the Convention), the Republic has reaffirmed its basic policy of protecting minorities' rights.

CCPR/C/67/L/KOR
HUMAN RIGHTS COMMITTEE
Sixty-seventh session

LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE SECOND PERIODIC REPORT OF THE REPUBLIC OF KOREA (CCPR/C/114/Add.1)

adopted by the Committee on 27 July 1999

Status of Covenant

1. Is it intended to establish an independent mechanism for monitoring human rights violations and for addressing complaints?

Discrimination on grounds of sex (Article 3 and Article 26)

2. What measures has the State party adopted to protect women against domestic violence? What remedies are available to a woman who is subjected to domestic violence?

3. What measures have been taken to promote equality between men and women? What measures have been adopted to remedy the discriminatory situation suffered by women within the electoral system and their participation in political parties and in public service (see paragraph 64 of the report)?

4. Do women have access to means of family planning and are these means available to all women?

Right to hold opinions, freedom of expression (Article 19)

5. Given the Committee's concerns regarding the compatibility of the National Security Law with the Covenant, has the State party reviewed past convictions under this law so as to ensure release of persons convicted for mere expression of their views? Is release of such persons conditional on signing a law-abiding oath? Please give details of the number of people convicted of offences under this law since submission of the last report. What has been done by the State party to make the National Security Law compatible with the Covenant?

6. In regard to para. 199 of the Report: please explain the specific grounds for censorship of films and video works by the Performance Moral Committee.

Freedom from torture, liberty of person and prohibition of arbitrary arrest and detention, administration of justice (Articles 7, 9, 14)

7 What procedures exist for independent monitoring of the police and members of the National Intelligence Agency and for investigating complaints of torture and other abuses of power by these bodies? Please give details of investigations carried out and their results.

8. Is there an independent mechanism for monitoring prison conditions and for investigating complaints by prisoners and detainees? Please give details.

9. What has been done to investigate allegations of gross human rights violations during the period of military government that was in power until the late 1980's and to prosecute persons responsible for such violations?

10. In light of paragraphs 106 to 110 of the report please explain the new conditions in the law of 8 May 1991 as amended, concerning "voluntary appearance" as well as the provisions of the Code of Criminal Procedure of 1 January 1997 regarding the issuance of arrest warrants and the length of pretrial detention. Are all persons under arrest afforded access to legal assistance?

11. Please explain use made of the Security Surveillance Law to monitor conduct of some released prisoners.

Right to privacy (Article 17)

12. Please explain the law, practice and judicial control of eavesdropping on private conversations, particularly of telephone conversations, by state authorities.

Freedom of assembly and freedom of association (Articles 21 and 22)

13. Please explain reasons for arrest of trade union leaders who organized strikes protesting government policy and comment on compatibility of these arrests with articles 21 and 22 of the Covenant. Are any trade union leaders still being detained?

14. What restrictions exist on the right to form or to join trade unions and the right to strike under the Trade Union Relations Adjustment Act and any other laws?

15. In relation to paragraphs 213 - 214 of the Report: Is the final decision whether to allow assemblies and demonstrations in the hands of the police? Is it possible to challenge a decision prohibiting an assembly or a demonstration before the courts?

Discrimination (Article 26)

16. What legislation exists to protect persons against discrimination in the public and private sectors?

17. What measures has the State party taken to protect migrant workers and other aliens from harassment and ill-treatment by the police and immigration officials? Does legislation exist to guarantee equality in conditions of employment between migrant workers and Korean residents?

Optional Protocol

18 What action has the State party taken following adoption of the Committee's Views in the following communications: 518/1992 (Sohn case); 574/1994 (Kim case) and 628/1995 (Park case)?

Dissemination of information about the Covenant (article 2)

19. Please indicate the steps taken to disseminate information on the submission of the report and its consideration by the Committee, in particular, on the Committee's concluding observations. Furthermore, please provide information on education and training on the Covenant and its Optional protocol provided to government officials, school teachers, judges, lawyers and police officials.

HUMAN RIGHTS IN SOUTH KOREA

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

◆

AUGUST 1999

Minbyun – Lawyers for a Democratic Society

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

PREFACE

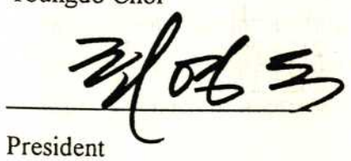
We, Lawyers for a Democratic Society, after a consultation with other members of Korea Human Rights Network respectfully submit this report to the Human rights Committee(the "Committee") and its members. We hope to provide information that will help the examination, by the Committee, of the second periodic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

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

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

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

Youngdo Choi



President
Minbyun - Lawyers for a Democratic Society

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PART I

Objective of the Counter Report

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

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

General Critique on the Government Report

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

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

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

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

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

Factors and Difficulties in the Implementation of the Covenant

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

human rights during the period were largely ignored.

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

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

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

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

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

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

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

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

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

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

Relation between the Covenant and Domestic Law

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

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

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

17. In February 1991, Mr. Sohn Chong-kyu(Communication No. 518/1992), former union president of Kumho Ltd. who participated in a conference on Unions' solidarity, was arrested by the police. When workers of the Daewoo Shipping Co. went on strike, he criticized the government for ordering the police force into the strike. He was charged with the violation of the prohibition of third party intervention regulated in Article 13 paragraph 2 of the Law on Labor Disputes and the Law on Assembly and Association. In August 1991, he was sentenced to one year and six months' imprisonment with three years' probation at the Seoul district court. He subsequently filed a communication to the Human Rights Committee in July 1992, because the judgement on his case violated his freedom of expression provided in Article 19 paragraph 2 of the Covenant; on August 3, 1995, the committee decided that the punishment against Mr. Sohn was in violation of the Covenant and the government shall be responsible for redemption including proper compensation under Article 2 paragraph 3(b) of the Covenant.

Despite such decision made by the committee, the government has not taken any action for redeeming Mr. Sohn. He sued the government for compensation, but his lawsuits were rejected by both the trial and appeal court. Recently, the Supreme Court finally ruled against Mr. Sohn's request. It judged "the punishment against Mr. Sohn does not constitute violation of freedom of expression provided in Article 19 of the international covenant." Furthermore, it stated that Paragraph 3 of Article 2 of the covenant is to

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

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

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

PART II

Remedies for Violation of Rights

<Article 2>

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

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

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

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

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

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

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

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

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

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

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

Independence of the Judiciary and Right to Fair Trial

<Article 2 and 14>

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

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

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

31. The government report argues that it appoints judges of military court among military attorneys who have equivalent qualification to lawyers of civilian courts. The government's claim is untrue. According to Article 22, paragraph 2 of the Law of Military Courts, the military court should be composed of military judge and non-lawyer judge, and a senior judge shall be chief judge. And according to Article 24 of the same law, non-lawyer judge shall be appointed among general officers. However, that is different from the truth since non-lawyer judge has been appointed among seniors in rank, and chief judge who presides over a trial has been appointed among general officers by custom. This is believed to be in violation of the purport of the Constitution, which specifies that all the people have the right to receive lawful trial governed by judge appointed in accordance with the Constitution and law.

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

33. Korea has only paid lip service to the principle of the presumption of innocence. The arrested suspect or the accused are treated in the same way as someone who has already received the 'guilty as charged' verdict. They are often brought before the court, hands tied with a rope or in handcuffs, wearing prison uniforms. The Special Act on the

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

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

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

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

37. According to the Criminal Procedure Code, the hearsay rule may not be applied if

the witness cannot present himself for direct questioning because of "death, disease or other appropriate reasons", or when the statement of record has been written under credible situations. However, courts in Korea set the scope of this regulation too widely and apply it in cases where the witness cannot be located.

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

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

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

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

Right to a Defense Counsel

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

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

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

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

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

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

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

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

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

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

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

Legal Aid in Criminal Cases

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

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

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

PART III

Right to Life

<Article 6>

Arbitrary Use of Weapons by the Police

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

Death Penalty

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

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

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

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

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

Other Threats to Right to Life

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

- March 20, 1997: students demonstrated in front of the Chosun University Gate in Kwangju, where Ryu Jae-eul, a participating student lost consciousness at 13:55 and was moved to the University hospital but died at 15:30.
- September 16, 1997: police raided Chung-Am Apartment 1308 in Buk-Gu, Kwangju to arrest Kim Joon-Bae, an executive member of Hanchonryun. At 00:10, Kim fell from the building balcony in an attempt to escape arrest and died.
- February 2, 1997: Min Byung-il, a core member of Shingal Evacuee's Committee in Yong-In city was taken to police custody at the Shingal branch of the Yongin Police Station. A row broke out shortly after, developing into a scuffle. Min was badly beaten and taken to Namsuwon Hospital, where he was declared brain dead.
- July 25, 1997: Park Soon-duck was one of the demonstrators protesting against the government's decision to remove poor residents from the Junong 3-Dong area for the sake of re-development. Subcontractors hired to force the residents out deliberately started a fire, forcing a stampede out of demonstrators. Critically injured and died at Kyung-Hee University Hospital on July 26.

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

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

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

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

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

<Article 7 and 9>