



방문 보고서

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227

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03	1	

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PRELIMINARY STATEMENT

FACTFINDING MISSION TO THE REPUBLIC OF KOREA

February 10-17, 1989

From February 10-18, 1989, a two-member delegation from the International Human Rights Law Group visited the Republic of Korea. The delegation was headed by Steven Schneebaum, a member of the Law Group's Board of Directors and a partner in the Washington, D.C. law firm of Patton, Boggs & Blow. The delegation also included Craig Kramer, a Law Group pro bono attorney and an associate at Patton, Boggs & Blow. The purpose of the delegation's visit was to evaluate the political and human rights environment following the December 1987 presidential election and the April 1988 National Assembly elections.

The delegation's visit is part of the Law Group's Republic of Korea Project. The Project, initiated in September 1986, has resulted in reports on freedom of expression, the presidential and National Assembly elections, and general political developments in Korea.

During this visit, the delegation met with government officials, political party leaders, representatives of the media, citizens groups, human rights organizations, lawyers associations, and individuals from various walks of life.

This preliminary statement highlights the most significant findings and conclusions of the delegation's visit. A more detailed report will be prepared in the near future.

I. The Electoral Process.

In the past year and a half Korean voters have been to the polls three times and are now preparing to go for a fourth, and possibly a fifth. The first vote was in October 1987 when the voters approved a constitution mandating direct presidential elections and a strengthened National Assembly, among other important changes. Less than 2 months later the presidential election was held, followed by National Assembly elections in April 1988. In the National Assembly elections the ruling party lost its legislative majority for the first time in almost 40 years. Sometime in the near future, Koreans will elect local officials, marking the end of a remarkable series of constitutionally-prescribed elections in Korea, and a continuation of the struggle for democratic institutions. In addition, the voters may also be given the opportunity to pass judgment on the current government of President Roh Tae Woo in a special referendum which is currently the focus of considerable controversy.

The delegation was concerned primarily with the presidential, National Assembly, and local elections. The validity of the presidential election, which resulted in a victory for President Roh of the ruling Democratic Justice Party ("DJP"), is currently the subject of a lawsuit brought by the Catholic Bishops in the Korean Supreme Court. The lawsuit was brought in January 1988, and under Article 137 of the Presidential Election Act the Supreme Court had 12 months from the day the lawsuit was instituted to resolve it. Although several hearings were held by the Court within the statutory period, both parties to the dispute -- the Catholic Bishops and the defendant Central Election Management Committee ("CEMC") -- have agreed, with the consent of the Court, to extend the time for hearing of the evidence.

This extension might allow the Court to obtain a complete record of National Assembly investigations into alleged presidential election fraud. Indeed, the Court may already have reviewed parts of this record, as opposition Assemblymen indicated to the delegation that they have been providing informal support for the Catholic Bishops' effort to invalidate the election.^{1/} These politicians firmly state that there was

^{1/} Several opposition Assemblymen expressed regret that their party had not brought its own, independent action to challenge the presidential election result. Under the Presidential Election Act, actions challenging the validity
(continued)

substantial election fraud, but they admit that reasonable people may differ over whether the available evidence proves that the election was subverted by fraud.^{2/} In any event, these politicians believe that the Catholic Bishops will adequately present all of the evidence and that the Supreme Court will render a fair verdict.

Similar lawsuits -- approximately 20 in number -- have been filed by the ruling and opposition parties with the Supreme Court challenging the results in individual National Assembly districts. In all of these election-related cases, the seriousness with which the Supreme Court handles the lawsuits, regardless of the outcomes, will provide some indication as to the independence of the judiciary and the usefulness of relying on legal remedies in the current Korean context.

The next constitutionally-mandated elections will involve the election of local officials. Since the early 1960s, all local officials -- including mayors and governors as well as local neighborhood chiefs and town council members -- have been appointed by a succession of military leaders. This system has hindered the development of effective opposition parties by denying them local bases of support and an opportunity to learn the skills necessary to govern. In March 1988, the DJP unilaterally passed local autonomy laws calling for a series of local elections through 1991. The opposition, however, has consistently expressed its intention to hold local elections much

of a presidential election must be brought within 30 days following the election. However, many opposition politicians claim that the Supreme Court as it was constituted at the time of the presidential election was controlled by the ruling party. Thus they argue that a lawsuit to overturn the election would not have been worth the commitment of time and money. Since the election, a new Supreme Court Chief Justice has been appointed with the consent of the opposition-dominated National Assembly, and now some of the same opposition politicians who once rejected a lawsuit to challenge the presidential election express regret that they do not have a chance to argue their case before what some perceive to be an independent Supreme Court.

^{2/} This distinction is important because under Article 136 of the Presidential Election Act the Supreme Court is directed to invalidate an election only when it is proved that there was enough fraud to "have influenced the result of the election."

sooner. Nevertheless, the opposition has been focusing more on National Assembly investigations of government corruption in the previous administration than on local elections, and the DJP law therefore continues to govern the timing and conduct of local elections.

Under the DJP law, local assemblies will be elected first, followed by the election of chief executives. The opposition, in contrast, favors the holding of a single election in which all of these positions are contested simultaneously. Thus, as the National Assembly investigations of government corruption wind to a close, it can be expected that the opposition, which has a collective majority in the Assembly, will seek to amend the local election law. Despite uncertainty as to the timing and format of these elections, both ruling party and opposition representatives expressed their belief that local elections, whether partial or complete, would be conducted within the year.

Notwithstanding the importance of local elections, the delegation's discussions in Seoul were dominated by the prospect of an "interim evaluation" of President Roh Tae Woo. The evaluation was promised four days before the presidential election by then DJP presidential candidate Roh in a speech on Youido Island in Seoul. In that speech, Roh promised to submit shortly after the September 1988 Olympics to a "re-trusting" (which roughly translates as "vote of confidence") if he were elected president. The form of the interim evaluation, as the "re-trusting" has come to be known, has never been specified. In the months following the presidential election, the DJP cautioned that the interim evaluation might not involve a plebiscite, but rather a vote of confidence in the National Assembly or a vote of the Cabinet. The opposition's success in securing a majority of the Assembly in the April elections, however, seems to have foreclosed the possibility of an Assembly vote, barring any unforeseen agreement between the ruling party and one of the opposition parties.

The delegation found a consensus developing around the notion that the interim evaluation must involve a vote by the general populace. Such a vote would not be governed by existing laws; thus, amendment of the constitution or of the laws would be necessary as a precursor to the vote. The delegation also found a consensus developing around the notion that, despite the fact that President Roh only needed 36% of the vote to win the presidency, he would need at least 50% of the vote in an interim evaluation to be able to declare victory in the "re-trusting." Nevertheless it remains unclear whether the vote will focus on President Roh himself or rather on his programs.

Even if President Roh does not obtain the necessary 50%, many in the ruling party apparently feel that he should remain in office, taking the evaluation as an indication that changes need to be made, rather than as an indication that he should step down from the presidency. Since the interim evaluation is currently governed by neither the constitution or the laws, this approach would be within the bounds of reason. Any amendments to the law, of course, might also stipulate the required percentage and the specific consequences of any outcome.

It is worth note that on the day the delegation arrived in Seoul the Chosun Ilbo newspaper published a survey conducted in coordination with the Korean Gallup polling organization revealing that over 63% of the voters thought President Roh should continue in office even if he does not secure a 50 percent approval rating. Some members of the ruling party evidently take this as an indication that the evaluation should be held as soon as possible, while others, perhaps worried about the ongoing National Assembly investigations and impending student demonstrations and labor negotiations, are urging that a mid-term evaluation be held, roughly in June 1990.

Whatever the timing or the format of the evaluation, the stakes are high. If the vote goes against the ruling party it will have to face a storm of calls for resignation of the President. If the majority of voters give a positive evaluation of President Roh, the opposition will lose a key political advantage because Roh will be able to claim the support of a majority of the voters, a luxury not afforded by his plurality victory in the presidential election. In deciding how to cast their ballots, voters will have to recognize the continuing split in the opposition, which contributed to the ruling party's presidential election victory, and the prospect of another tumultuous campaign if a national election were called anytime soon.

II. Law Reform.

Although all of the parties have expressed their commitment to reforming the nation's laws to bring them into conformity with international norms, law reform has largely been delayed by the Olympics and the National Assembly investigations. Nevertheless, political leaders and others have been formulating law reform proposals, and the delegation heard detailed reports on the proposals of both the Korean Bar Association ("KBA") and the government.

The government's proposals were encouragingly comprehensive and demonstrated a real sensitivity to human rights concerns

raised by both Korean and international observers. For example, the government proposes to remove the vague provisions of the National Security Act which prohibit "benefitting" in any way an antistate organization; to allow all nonviolent demonstrations under an amended Law on Assembly and Demonstrations; to limit the involvement of the Agency for National Security Planning (formerly known as the "KCIA") in domestic political affairs; to eliminate provisions in the criminal law allowing arrest and detention without warrant for up to 48 hours; and to ensure the independence of the judiciary. Two important changes have reportedly already been made: it is no longer a crime to "spread a groundless rumor" or to slander the state.

Even if the government's proposals are enacted in full and implemented with vigor, ^{3/} however, several areas of serious concern remain. First and foremost, the government refuses to propose the repeal of the preventive detention provisions of the Public Security Act. The Act states that a prison sentence may be extended every two years for persons who have completed sentences for violating specified articles of the National Security Act, the Criminal Code, or the Military Penal Code and who are deemed to show a "strong possibility of committing a crime again." Instead of prohibiting preventive detention, the government proposes to alter the way in which the law is applied. Under current law, the prosecutor submits a request for preventive detention to the Minister of Justice, who refers the request to a board appointed by the President and headed by the Vice Minister of Justice. The Minister decides upon the request "through the resolution of the board." A prisoner may appeal a preventive custody order to the high (appeals) court within 30 days of its execution. The Law Group believes that no prisoner has ever won such an appeal.

Under the government's proposed amendment to the Act, the prosecutor would submit his request for preventive custody directly to a trial court, thereby removing the executive branch from the decision to impose preventive custody. The proposed amendment would appear to provide greater procedural guarantees for prisoners subject to the Act. Even with procedural guarantees, however, the Public Security Act would continue to deny the right against arbitrary arrest and imprisonment. Indeed, it is difficult to imagine what kind of evidence might be presented to a judge to prove the "possibility" of a crime being

^{3/} The Ministry of Justice indicated to the delegation that the relevant laws are now being applied as if the government's proposed amendments had already been enacted.

committed in the future. If there were evidence to suggest that a crime is about to be committed, for example, then the defendant would be subject to the criminal law of attempts, and the Public Security Act would be unnecessary. If, on the other hand, the prosecution were able to show merely that the defendant held beliefs which created a danger that an offense might be repeated, then the court would be violating the defendant's right to freedom of thought and expression if it were to imprison him on this evidence alone. In tacit recognition of the inherent problems of the Act, the Minister of Legislation argued that the government has no desire to use the Act at all except with regard to several dozen prisoners already in preventive detention. As long as the Public Security Act is on the books, however, all Koreans, not just those who are already in detention, must be concerned. Perhaps for this reason, the KBA has called for repeal of the Act.

A second major concern involves the application of the Law on Assembly and Demonstrations. The government's stated policy permits all nonviolent demonstrations and endorses a stern crackdown on demonstration violence. On the surface, this policy is unassailable; but in practice, the policy has shown to be somewhat lacking in the ability to recognize key distinctions. At any significant demonstration in Korea, riot police by the thousands are dispatched to the place of assembly. The conspicuous presence of such large numbers of riot police, coupled with the private agenda of some demonstrators, creates an atmosphere of intimidation which makes conflict almost inevitable. When violence does occur, it is often difficult to determine who initiated it.

A case in point was the farmers' rally which occurred during the delegation's visit. The rally took place on Youido Island on Monday, February 13. After the demonstrators listened to speeches criticizing government agriculture policy and United States trade policy, a violent clash with riot policemen ensued. Observers and participants differed on the cause of the violence. The ruling DJP called the demonstration "a prelude to a violent revolution" engineered by "people who want to overthrow the system." Consequently, the government called for a strengthening of the intelligence function of the police in order to provide more thorough investigation of rally organizers in advance of a rally; a law prohibiting the use of firebombs; and a ban on large rallies unless organizers submit to authorities assurances in advance that their gatherings will be peaceful. As to the last item, the National Police Headquarters announced that effective February 25 it would block access to rally sites when organizers fail to make the proper submissions, a move which was expected to ban virtually all such assemblies. In sharp contrast

to the government's position, opposition politicians, prominent dissidents, and rally participants claimed that the violent clash was the result of excessive use of force by the police and called on the government to effectively address farmers' demands that were the reason for the demonstrations in the first place.

Despite their apparent differences, all sides seem to agree that those who initiate violence should be held responsible. Perhaps this principle can be used as a starting point for joint efforts to monitor demonstrations and prevent further outbreaks of violence. Without such a joint effort, the government might be legitimately faulted for not acting in good faith to protect dissent. Beyond the question of who initiates violence, it must be emphasized that the police, as agents of the government, have a special obligation to refrain from the excessive use of force in carrying out their duties.

III. Political Prisoners.

Although the Ministry of Justice states that all political prisoners were released in December 1988, reliable citizens groups contend that over 250 political prisoners remain. This number includes the 35 prisoners being held in the Chongju Preventive Detention Center under the preventive detention provisions of the Public Security Act; prisoners alleged to have collaborated with North Korea; people who have been recently arrested; those who were convicted under the National Security Act or who were convicted on the basis of allegedly coerced confessions; and others. As discussed above, aspects of the Public Security Act violate international human rights norms, and the delegation joins other international human rights groups in urging that prisoners held under this law either be charged and tried with a recognizable criminal offense or be released. The delegation urges similar treatment of those prisoners who were convicted under the National Security Act or on the basis of confessions which might have been obtained through coercion or whose trials were marked by other procedural irregularities.

IV. Torture by Police and Securities Forces.

The delegation was reassured that no case of physical torture occurred during 1988. Nevertheless, it is concerned that many of the promised reforms of police and security forces have not been enacted, thus leaving in place many of the institutional structures which led to or at least tolerated the use of torture in the past.

V. Freedom of Speech, Press, and Association.

Freedom of speech, press, and association are virtually assured in all but a few important circumstances. The greatest danger to freedom of speech involves the government's attempts to crack down on violence at demonstrations, as discussed above.

Freedom of the press has been greatly expanded since the April 1988 National Assembly elections, as evidenced in part by the large number of new magazines and newspapers and the rise of the progressive Hankyoreh Shinmun to become one of the top five daily newspapers in total circulation. A significant improvement could be made by repealing the so-called "facilities requirement," which acts as a prior restraint on the press by requiring that a daily newspaper have certain minimum facilities, including a sophisticated and costly rotary printing press capable of printing 20 thousand copies per hour.

The government still maintains absolute control of the nation's two television stations, KBS and MBC. Some improvement has been made in the area of television broadcasting, however, as recently-formed journalist unions have demanded more accurate and fair reporting, and the Korean Broadcasting Commission, which in the past censored all television programs, has reportedly been more restrained in its approach.

Finally, the Ministry of Justice still intends to use the National Security Act to suppress the distribution of certain books which, if used by groups, might generate support for North Korea. Application of the law in this manner has had a chilling effect on the right to freedom of expression in the past, and could have a similar effect in the future.

VI. Judicial Independence.

Independence of the judiciary requires the independence of judges, prosecutors, and lawyers. In the past, the Korean government has used both subtle and not-so-subtle methods to manipulate these three groups. Judges have been transferred, prosecutors dismissed, lawyers jailed or disbarred. The recent democratic developments have brought some welcome changes. The appointment, with National Assembly consent, of a new Supreme Court Chief Justice seems in some measure to have emboldened judges, who in recent months have declared several repressive laws unconstitutional and denied a writ of arrest under the National Security Act. The new Constitution Court, vested under the 1987 Constitution with the authority to determine the constitutionality of laws, is reportedly scheduled to pass on the National Security Act, the Law on Assembly and Demonstration, and

the Public Security Act sometime before April. Finally, lawyers are free to represent any client in any cause.

Still, there are some disturbing signals that the government retains the power and the willingness to influence the judicial process. Last fall, two brigadier generals convicted of stabbing a journalist who had written an article criticizing the military were let go with suspended sentences. And this winter the Prosecutors Office cut short an investigation into irregularities in the previous administration. These cases urge caution in evaluating the independence of the judiciary. The handling of future cases, including the Catholic Bishops' presidential election lawsuit and the case now before the Constitutional Court, will perhaps reveal more about judicial independence. In the meantime, the Korean Bar Association has proposed a number of legal reforms which, if enacted, would provide institutional protection for judges, prosecutors, and lawyers. These types of protection -- including guaranteed tenure and freedom from arbitrary transfer -- are vital in assuring that the judiciary remains independent in all cases, including those that threaten the power of incumbent officials.

VII. Conclusion.

Much has been accomplished in the Republic of Korea in recent months. But Korea remains a nation of men, rather than of laws. The winds of freedom which pass through Seoul today are largely unsupported by the fundamental institutional and legal reforms which have long been demanded by the people. Thus the government retains at its disposal virtually all of the antidemocratic devices that were so effective in the past. To be sure, the government and the ruling party have joined the opposition parties and dissidents in calling for the dismantling of these devices and the creation of democratic institutions. It is hoped that progress in this regard comes quickly. No one inside or outside Korea doubts that the Korean people have the commitment to democracy and to the principle of respect for human rights that is essential in carrying out these important changes.