

SOUTH KOREA: Government continues to undermine human rights institution and freedom of expression in 2010

As 2010 drew to a close, tensions between North Korea and South Korea had increased significantly following an exchange of artillery fire on November 23, 2010, after the North shelled an island near their disputed sea border, killing two South Korean marines and two civilians, setting dozens of buildings ablaze and sending civilians fleeing for shelter. This is viewed as being one of the most dramatic incidents between the North and South in recent times.

The AHRC is concerned that the increased tensions will result in greater polarisation within South Korea's society, between conservative, nationalist elements and progressive voices. Already, there has been increasing action taken against progressive organisations and activists under the current government, which has been accompanied by a deterioration of the situation of human rights in the country, notably with regard to the freedom of expression and assembly.

2010 has seen further constraints on such key freedoms and the AHRC is concerned that the government appears to be trading off the important advances in human rights that set South Korea apart from many other countries in the region, including North Korea, in favour of narrow political interests. South Korea must hold on to the democratic institutions it has fought so hard to create in the past. Further acts by the government to undermine the National Human Rights Commission of Korea are a serious concern in this regard. Economic development that is not also matched by increased democratisation and the development of the rights of the country's people, is ill-advised and likely to be unsustainable. The following report will look at some of the notable events that have taken place in 2010 that affect the enjoyment of rights and democracy in South Korea.

Deterioration of the independence of National Human Rights Commission of Korea

The AHRC has been concerned about the South Korean government's actions to undermine the independence of the National Human Rights Commission of Korea (NHRCK) since it came into power. In 2009, the AHRC addressed two open letters to the chairperson of the International Coordinating Committee of National Human Rights Institutions, requesting the downgrading of the NHRCK's status due to its dwindling independence, and highlighting the need for the ICC to look into the NHRCK's increasing subordination to the government.

In 2010, the current administration is continuing its efforts to eradicate any notion of independence for the NHRCK, including through efforts to alter the NHRCK's internal regulations in ways that the AHRC considers to be of serious concern. Before Mr. Ahn Kyung-Whan, the former chairperson of the NHRCK resigned, the NHRCK petitioned the Constitutional Court requesting an "Adjudication on

Jurisdiction Disputes” regarding the around 21 percent downsizing of the NHRCK by the Ministry of Public Administration and Security that was in process. The Constitutional Court dismissed the petition on October 28, 2010 based on the findings that the NHRCK is not a constitutional body and therefore is not qualified to file such petition to the Constitutional Court.

In the meantime, the NHRCK, led by Mr. Hyun Byung-Chul, the current chairperson, together with some non-standing commissioners, proposed a draft amendment to the NHRCK's managerial regulations to its Plenary Committee.

According to the current managerial regulations, the standing committee considers and deliberates on matters relating to human rights, expresses opinions and make recommendations on urgent matters and decides on whether to refer matters to the plenary committee. If three standing commissioners agree, the NHRCK shall make a recommendation on a particular issue without intervention or influence from either chairperson, who is appointed by the President, or non-standing commissioners. At the time of this regulation in 2006, the standing commissioners were appointed among people who had good knowledge on human rights according to the NHRCK Act.

However, the essence of the draft amendment is that it gives power to the chairperson to decide whether or not the NHRCK will express opinions or make recommendations and restricts power of the standing committee. In protest, two standing commissioners - Mr. Yu Nam-Young and Ms. Mun Kyung-Ran - left a meeting and resigned soon afterwards, on November 1. Mr. Cho Kuk, a non-standing commissioner then also resigned on November 10, 2010. 67 out of the 160 members of various committees including the specialised committee, the advisory organ and the conciliation committee appointed by the NHRCK returned their appointment letters and resigned on November 15.

All political parties, except the ruling party, strongly opposed the draft amendment and called for the resignation of Chairperson Hyun Byung-Chul. 15 former commissioners, 334 legal scholars and lawyers and 660 civil and human rights organisations such as women's groups and persons with disabilities' groups also joined these calls.

In resigning, Mr. Yu explained his decision based on problems relating to the institution's internal management, including:

1. A statement denying the independence of the NHRCK by the chairperson to the National Assembly;
2. The Chairperson's unjust denial of a request to holding temporary plenary committee and standing committee under article 5(2) of the managerial regulations;
3. The dismissal of staff on the request of the Ministry of Public Administration and Security;

4. The Chairperson's unilateral suspension of a meeting discussing the submission of the NHRCK's opinion on the Youngsan case, and the resignation of staff who helped to prepare the draft of the opinion;
5. The Chairperson's submission to members of parliaments of an opinion about a matter which the plenary committee had been discussing , without a resolution by the committee, making his opinion appear to be the NHRCK's official opinion, in February 2010;
6. When three standing commissioners took up the matter relating to No. 5 above, they were instead subjected to an investigation;
7. Plenary committee's decision that a standing commissioner is unable to submit a matter to the standing committee.

It is reported that the NHRCK has kept silent on sensitive human rights violations cases or issues that are directly related to the current government, such as: the case of Mr. Park Won-Soon, the prosecution's investigation into the report about mad cow disease by the Munwha Broadcasting Corporation's programme, *PD Notebook*; a formal request on the constitutionality of the Act on Assembly and Demonstration concerning night time assembly; the landmark Minerva case; and the surveillance by the government of civilians, including UN Special Rapporteur on freedom of expression, Mr. Frank La Rue, during his official mission to South Korea in May 2010. While the chairperson of the NHRCK met Mr. La Rue, he prohibited standing commissioners from doing so. Concerns about the cases above were also found in his findings after his mission to South Korea.

The AHRC believes that there are many more issues of concern that were not cited above, however, which are also of concern and therefore has called for a thorough investigation into developments at the NHRCK.

In this context, the attempt to amend the managerial regulations is being seen as an attempt by the Chairperson to exert authority and nullify the standing committee. The proposed amendment is seen as being a move by the chairperson of the NHRCK, and some commissioners recommended by the ruling party, to be able to block issues they do not want to speak about from being submitted for discussion. Under the amended regulations, the NHRCK's Chairperson will have excessive power concerning decision making relating to the consideration of human rights matters. While the standing committee has often made recommendations about the government's policy and laws concerning sensitive issues, there are concerns that the plenary committee is now unlikely to do so.

The AHRC is forced to conclude that this national institution, which had been hailed as a model for other countries in the region, has now significantly deteriorated, notably due to the appointment of commission members who have limited or no expertise or prior involvement in the protection and promotion of human rights. The NHRCK's increasing subordination to the government and executive has been accompanied by growing self-censorship and inaction concerning sensitive human rights issues mentioned above. The AHRC fears that the NHRCK is becoming completely incapable of defending human rights or fulfilling its mandate, and will

instead become another appendage of government that will only function to praise the government locally and internationally.

On November 11, a new standing commissioner was appointed by President Lee Myung-Bak, from an organisation that supports government policy and is linked to the ruling party. Statements and press releases issued by this organisation - called "Lawyers for citizens" - are of concern, as they show no regard for recommendations or views made by international human rights instruments.

In its letter, the AHRC called on the International Coordinating Committee (ICC) to look into the decline of the independence of the NHRCK. Having already requested the downgrade of the NHRCK, the AHRC believes that the worsening situation requires that the ICC intervene with the government and the chairperson of the NHRCK, and take all measures available to it to shed light on the worsening situation of the institution. In particular, the government must ensure the independence of the NHRCK and put a halt to all actions taken to undermine this. It is imperative that the ICC determine whether the NHRCK complies with the Paris Principles, notably concerning its competence and responsibilities, composition and guarantees of independence and pluralism, and methods of operation. Without action, the AHRC is concerned that the ICC will have lost an opportunity to save this institution from damage that will be long-lasting and severely detrimental to the protection of human rights in the country.

Legal attacks used to target human rights activists

Two human rights activists, Mr. Park Lae-gun and Mr. Lee Jong-hoi, were arrested on January 11, 2010. They are representatives of a coalition of around 100 civil and human rights organizations asking for a thorough investigation into the high-profile Youngsan case.¹ This case involved the planned forced eviction of numerous persons in order to enable a property development project to go ahead. The planned eviction led to protests. A 1500 strong police force was dispatched to disperse about 50 protesters, who dug in. During the police's actions to oust the protestors, a fire broke out. The police continued their operation regardless and this resulted in the death of 5 protesters and 1 police officer.

The civil society coalition organized demonstrations concerning this incident. The arrest warrant against the two human rights activists was issued in March 2009 and they were finally arrested and detained on January 11, 2010. The charges laid against them were under the Act on Assembly and Demonstration as well as Road Traffic Act. However, article 10 of the Act on Assembly and Demonstration, which was found to be unconstitutional by the Constitutional Court on 24 September, 2009, was the core article used to enable the arrest warrant. They were released on bail on April 30, 2010 and their cases are still going on.

¹ For more details concerning the Youngsan case, please see:
<http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-001-2009>

Separately, lawyer Mr. Kwon Young-Gook, was on his way to take part in a press conference concerning the mass dismissal of workers from Ssangyong Motors Company in Pyeongtaek-si on June 26, 2009, when he witnessed six labour activists being arrested. The persons were being arrested without due process; they were not being informed by the police what the reason for their arrest was. Mr. Kwon, as a lawyer, intervened in this process and requested to speak with the persons that had been arrested. He was then arrested for obstructing the police's carrying out of their official duties. This case (No.: 2009KODAN1660: Article 136 of Criminal Act), is still pending.

The sinking of the Cheonan and legal threats to organizations calling for transparency

On March 26, 2010, the Cheonan, a South Korean Navy vessel sank in the Yellow Sea. The government immediately constituted a team to investigate the causes of the sinking of the vessel. The preliminary results concluded that it was struck by a North Korean torpedo. Independent experts and local civil society groups have questioned aspects of the report produced by the government. Two NGOs, the People's Solidarity for Participatory Democracy (PSPD) -- which has special consultative ECOSOC status -- and Solidarity for Peace and Reunification of Korea, sent letters to the Security Council in which they expressed doubts concerning the credibility of elements within the investigation report produced by the Korean government-led international investigation team. The government has failed to respond concerning these legitimate questions.

Following this, government officials have made public statements that amount to incitement to attack these NGOs. For example, Prime Minister Jeong Un-Chan, has stated at the National Assembly that, "If they (the NGOs) were patriotic they would not say that the government's investigation report was incorrect at the UN." He went on to say, "I doubt which country they belong to. I express my grave concern that this will never benefit the national interest". An anonymous government official has added that, "This is an act benefiting an enemy state. It distributes ashes over the government's efforts". The Ministry of Foreign Affairs and Trade further stated that the NGOs' action would hinder the diplomacy that the government was engaged in.

Such statements and others accusing the NGO and its staff of being supporters of North Korea and acting on this country's behalf against South Korea are highly inflammatory and encourage reprisals against the NGOs. Following the comments by the authorities being broadcast, some 200 people belonging to conservative groups attempted to raid the offices of the PSPD on June 16, with other such attacks having been repeated since then. Even though around 100 police officers were deployed to guard the building housing the PSPD's offices, there are reports that members of the NGO's staff were assaulted. There have also been threatening phone

calls made to the PSPD's staff who remain seriously concerned for their own security and personal integrity.

The State Prosecutor's office reportedly leaked to newspapers that there was a possibility that the staff of the PSPD might be prosecuted under the National Security Act, if a case were to be filed. In doing so, and through other actions, the Prosecutor's office has taken an actively biased role in encouraging conservative groups to file complaints against the NGOs in order to enable the authorities to legitimise the launching of investigations against them.

It is also understood that the Prosecutor's office has similarly approached one of the experts who worked on the government-led report in order for this expert to submit a complaint concerning alleged criminal defamation by the NGOs.

However, after several concerns raised by both local and international rights groups about this, the government, in particular the prosecutor's office, have yet to take action against the two activists.

Country visit by the Special Rapporteur on the freedom of opinion and expression.

Mr. Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on 17 May, 2010 issued a statement on his findings during his official visit to South Korea. The AHRC has chosen to reproduce key elements in his findings as they are of significant importance for the protection of human rights in the months and years to come, as the freedom of expression continued to come under attack in the country. The AHRC urges the South Korean government to give serious consideration to the issues raised by the Special Rapporteur and ensure the full and prompt implementation of all recommendations made by this important UN mandate.² Here follow some of the Special Rapporteur's key findings and recommendations:

Freedom of expression on the Internet

As mentioned previously, the Republic of Korea has one of the highest levels of Internet connectivity in the region and the world, where more than 80 percent of households have access to fast, broadband Internet connection. I have been impressed by the level of active "Netizens" in the country and the emergence of an active and vibrant online culture, including the exchange of diverse views and opinions on online discussion forums. The Internet has thus become an indispensable tool to exercise the right to seek, receive, and impart information and ideas and to mobilize social change. However, I am concerned that in the last few

² <http://www2.ohchr.org/english/issues/opinion/docs/ROK-Pressstatement17052010.pdf>

years, there have been increasing criminal prosecutions and restrictions on freedom of expression on the Internet, which I will now briefly outline.

Prohibition to spread false information

Article 47 of the Framework Act on Telecommunications prohibits individuals to make a "false communication" over the Internet with the intention of harming the public interest, punishable by imprisonment of up to five years or a fine of up to fifty million won. Although this legislation had not been used for decades, in January last year, blogger Park Dae-sung, known as "Minerva", was arrested for violating this provision after he posted online articles predicting the economic crisis and criticising the Government's economic policy. He was accused of "posting fraudulent information on the Internet that harmed public welfare by negatively influencing South Korea's foreign exchange markets".

Although he was found innocent, the Prosecutor's Office has appealed this decision. The case has been put on hold until the Constitutional Court gives a ruling on the legality of this provision. There are two concerns that I would like to raise in relation to this issue. First, terms such as "false communication" and "public interest" are not clearly defined and are thus subject to undue limitations on the exercise of the right to freedom of expression. Second, no one should be prosecuted for the mere expression of opinions, even though it may be incorrect.

In this regard, the United Nations Human Rights Committee has expressed that the prohibition by law of untrue and unverified information constitutes a disproportionate restriction on the right to freedom of expression. I would also like to point out that had the press played a more active role in investigating and criticising the role of financial institutions, the impact of the global financial crisis might have been mitigated. **I recommend the Government of the Republic of Korea to abolish this provision.**

Arbitrary procedures for the deletion of information on the Internet

Based on the Act on Promotion of Information and Communications Network Utilisation and Information Protection (hereafter "Network Act"), any person alleging a violation of his or her privacy or reputation by information disclosed to the public through the Internet may request the Internet Service Provider (ISP) to immediately delete or temporarily block access to the information for up to thirty days.

The Korea Communications Standards Commission (KCSC), established in 2008 and considered to be an independent private body, assesses Internet content on various grounds including obscenity, defamation, threats to national security, and recommends ISPs and notice board operators to undertake correctional measures,

such as deletion of postings. If the ISPs reject the recommendation by the KCSC, the KCSC can issue administrative orders to suspend the websites, and thus cases of non-compliance are rare.

I am concerned that there are no clear provisions to determine whether the information on the Internet violates another person's right or reputation, or other non-permissible grounds, and that the ISPs and the KCSC are given the discretionary power to make that decision. Moreover, the KCSC essentially operates as a censorship body, and there is a risk that information that is critical of the Government may be deleted on the grounds of privacy violation or defamation through an opaque process. According to the statistics of the KCSC, since its establishment, over 2,000 posts have been deleted on the grounds of defamation, and over 1,500 posts have been deleted for violating the National Security Act.

In addition, article 44(7) of the Network Act, which lists the types of information that can be deleted or censored on the Internet, can encompass a broad range of crimes, including the obstruction of business, which itself is problematic. This has been illustrated in the case of 24 members of a boycott campaign who posted a list of companies putting advertisements in three newspapers, which they believed were biased towards the Government. On the basis of article 44(7) of the Network Act, the KCSC ordered the deletion of 58 postings which allegedly encouraged the boycott, and some of the individuals involved were sentenced to imprisonment, or were fined.

I have also been informed that Mr. Choi Byung-sung posted articles on the Internet exposing that the cement used by certain companies contains electronic waste products with carcinogenic substances. The KCSC ordered the deletion of these articles on the ground that they defamed the cement companies, despite the fact that as a result of his articles, the National Assembly deliberated on this issue and requested a national audit to be conducted, which has resulted in improved safety standards. In this case, the public interest and the obligation of the Government to protect the health of its population should outweigh the protection of the reputation of a particular company. I am also aware that other types of online information that are in the public interest have been recommended for deletion by the KCSC.

I would like to stress that States should never delegate the responsibility to private entities on such matters. **Any guidelines and the decision to determine what articles can be deleted or temporarily blocked should be made by an independent State body.**

Real name identification system

The Network Act requires identity verification in order to post messages on websites with more than 100,000 visitors per day. The Public Official Election Act also stipulates that online newspaper notice boards must register users and

confirm their real names before they can post messages prior to elections, to prevent the spread of false information or slander, which risks undermining the freedom of expression of political views during the election period, when public debate is essential.

In February 2004, the NHRCK adopted a decision that the real-name identification system "clearly qualifies as pre-censorship, restricts freedom of Internet-based expression rooted in anonymity, inhibits public opinion formation, and contravenes freedom of expression". Although the specific details of the real name identification have been changed since July 2007, I am concerned that the real name identification system has the potential to undermine individuals' right to express opinions, particularly criticisms of the Government, as well as the right to privacy. While there are legitimate concerns regarding crimes that are perpetrated via the Internet and the responsibility of the Government to identify such persons, **I recommend the Government to consider other means to identify a person and only after a crime has been committed, rather than a prior requirement, so as to minimize the infringement of human rights.**

Defamation

In the Republic of Korea, defamation is a criminal offence under the Criminal Code and an "unlawful act" under the Civil Code. Although criminal prosecutions have decreased, the filing of civil defamation suits and accusations of criminal defamation exert a significant chilling effect on freedom of expression.

During my visit, many cases of defamation have been brought to my attention. This includes the case of four producers and one scriptwriter from the Munwha Broadcasting Corporation (MBC)'s investigative programme, PD Notebook, who reported on the alleged risk of mad cow disease associated with beef import from the United States of America and criticized Government officials who were in charge of negotiations. As a result, they were arrested and charged with defaming Government officials from the Ministry of Agriculture in 2009. Although the Central District Court acquitted all staff in January 2010, the Prosecutor's Office has appealed, and the case is currently pending.

In another case, Mr. Park Won-soon, director of a non-governmental organisation, was sued for allegedly defaming the "nation" by stating in an interview that the National Intelligence Service (NIS) is pressuring corporations not to financially support civil society groups. This is an unprecedented case in that the "nation" itself has filed a lawsuit as a plaintiff and is claiming two hundred million won in damages.

As stated in article 19(3) of the ICCPR, the protection of the reputation of individuals is a legitimate ground for limiting the exercise of the right to freedom of expression. However, to fulfill the criteria of necessity and proportionality, there are specific conditions that need to be met.

First, the statement must be intentionally false, and must injure another person's reputation. Secondly, public bodies and public officials of all kinds – including all individuals of the legislative, executive or judicial branches of Government or who otherwise perform public functions – should be prohibited altogether from bringing defamation actions. Public office entails public scrutiny, as part of checks and balances of any democratic system. Thirdly, States should abolish all criminal defamation laws. The threat of harsh criminal sanctions, especially imprisonment, exerts a profound chilling effect on freedom of expression, which cannot be justified particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations. Such measures include an issuance of apology, correction or reply, or publication of any judgment which finds statements to be defamatory.

Hence, **I recommend the Government to remove the crime of defamation from its Criminal Code, and to promote a culture of tolerance regarding criticism.** Moreover, I would like to emphasize the principle that **defamation cannot be brought by a third party or a State institution as a plaintiff.**

Freedom of assembly

The right to freedom of expression includes the right to collective expression in the form of peaceful assemblies. In the Republic of Korea, this right is guaranteed in Article 21 of the Constitution, which explicitly prohibits a license system for assemblies. However, although the Assembly and Demonstrations Act stipulate that individuals should only report assemblies beforehand to the police, there is a de facto license system whereby assemblies may be banned and deemed illegal in advance for fear of traffic disruption and probable violence. I would like to highlight the June 2009 statement made by the former Chairperson of the NHRCK that "the Government claims to protect peaceful assemblies and demonstrations and only prohibits ones that may give rise to illegal and violent actions. Yet, by presuming that certain demonstrations will become violent and cracking down on them before violence occurs, the Government violates the fundamental right to freedom of assembly and demonstration."

In addition, the use of Seoul Square and Gwang-hwa-moon Square for assemblies, including press conferences, requires approval from the Seoul City Government, and acted upon by the National Police.

I welcome the decision by the Constitutional Court that the prohibition of assemblies after sunset and before sunrise in the Assembly Act is unconstitutional. The National Assembly has thus been requested to revise this law by June 2010. While I recognize efforts made by the National Police Agency to investigate allegations of the use of violence by riot police officials, I am concerned that investigations and prosecutions of allegations of excessive use of force is hindered by the fact that there are no visible name badges, identification numbers or any

other identifiable information on the uniform of riot police. I have also been informed that the police do not wear badges, which makes it impossible to bring individuals to account. I therefore call upon the Government to ensure that **all law enforcement officials must wear some form of identification that is clearly displayed during assemblies and demonstrations to prevent impunity.**

Freedom of expression before elections

Article 93 of the Public Officials Election Act prohibits individuals to distribute or post photographs, documents, drawings, printed matter, "or the like", which contains contents supporting or opposing a political party or candidate with the intention of influencing the election from 180 days before the election day to the election day. At the same time, article 58 of the Act provides that a simple statement of opinion or manifestation of an intention on the election do not constitute an election campaign and is thus allowed.

On 26 April 2010, the National Election Commission (NEC) issued guidelines entitled "Announcement on the activities of various organizations with respect to election issues", which prohibits organizations, including non-governmental organizations (NGOs) and religious groups, from installing, posting or distributing advertisements, posters, photographs, documents "or the like" on the main election issues. Hence, some of the activities of NGOs and religious groups have been restricted, as they are not permitted to disseminate information or hold a rally on key election issues such as the "Four Major Rivers Restoration Project" and "Free School Meals".

I am concerned that the restrictive interpretation of the provisions of the Public Officials Election Act in the recent guidelines may limit communication on key election issues and public policies. I am also alarmed by the fact that such activities are prohibited six months ahead of elections.

National Security Act

I am very much aware of the security concerns faced by the Republic of Korea, particularly in light of the recent Cheonan incident, and believe that all States have the legitimate right and obligation to have national security laws in place to protect its population. However, any national security law that restricts the right to freedom of expression must fulfil the criteria that I have mentioned previously, including the requirement that the law must be clear and drawn narrowly. Thus, while I welcome the fact that the number of charges and prosecutions on the basis of the National Security Act has decreased, I would like to reiterate the recommendations made by my predecessor fifteen years ago, by the UN Human Rights Committee, and by the NHRCK to revise article 7 of the National Security Act, as it remains vague and can be misinterpreted.

In addition, the Human Rights Committee has found the use of the National Security Law to be in breach of the right to freedom of opinion or expression in three individual cases (Mr. Tae Hoon Park, Mr. Keun-Tae Kim, and Mr. Hak Chul Shin). However, I have been informed that **the measures have not been taken to give effect to the Human Rights Committee's Views**, including two other cases where the Human Rights Committee found a violation of article 19 of the ICCPR (Mr. Jong-Kyu Sohn, Mr. Yong-Joo Kang), and the dialogue remains open in all five cases. I hope that the Government will demonstrate its commitment in upholding international human rights standards by implementing the Committee's Views.

Although this case is not directly related to the National Security Act, I would like to draw attention to the banning of 23 books by the Minister of National Defence in the military in July 2008, as these books were considered seditious. Seven military judicial officers filed a Constitutional Complaint regarding this prohibition, and as a consequence, two were expelled from the military on the grounds that they did not adhere to internal regulations and procedures of the military. Currently, the case is pending before the administrative court, as well as the Constitutional Court. I would also like to stress that the right to seek and receive information includes the freedom to select the types of books one may read. As the NHRCK stated in its decision of September 2009, "one's status as a human being takes precedence over one's status as a soldier in uniform". The banning of books is an undemocratic practice in any part of the world.

I would like to underscore that the strongest nations of the world are those that are truly democratic and protect the fundamental rights and freedoms, and therefore encourage the Republic of Korea to ensure that its national security policies go hand in hand with the respect of human rights.

Public broadcasting

There are also signs that the independence of the public broadcasting corporations and the diversity of the media are being undermined in the Republic of Korea. I would like to stress that to ensure the independence of public broadcasting corporations, there must be an effective appointment procedure which ensures that its head and management does not change from one administration to the next. I am aware that the Act on Development of Newspaper, etc., and the Broadcasting Act were proposed by the ruling party and adopted in July 2009 by the National Assembly in breach of regular deliberation procedures. I am concerned that these legislation allow conglomerates, newspaper companies and foreign capital to enter the broadcasting sector, which is contrary to the principles of diversity and plurality of the media.

National Human Rights Commission of Korea

Since the establishment of the NHRCK in 2001, it has played an active role in advocating for the promotion and protection of human rights in the Republic of Korea. I welcome the decisions of the NHRCK in finding a violation on thirteen cases related to freedom of opinion, expression and assembly between 2004 and 2009.

However, I am disappointed that since the appointment of new Commissioners in February 2010, **the majority has allegedly maintained that the Commission should not adopt a decision on three key cases involving violations of the right to freedom of expression on the basis that the Commission should wait until the cases are resolved in the courts.** This includes the defamation lawsuits filed against the producers of MBC's PD Notebook; the prohibition of assemblies and demonstrations after sunset; and the case of Mr. Park Wonsoo. However, it is my understanding that the Founding Act of the Commission stipulates that it has the power to submit its opinion to the courts even when the cases are still pending.

Given the crucial role of the Commission to enhance human rights protection in the country, I hope that the Commission will play a more proactive role to adopt decisions in the future. I also look forward to the improvement of the appointment process of the Commissioners, and note that the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights stated in its most recent report that the process of appointing Commissioners does not provide for formal consultation in the recruitment and scrutiny of candidates nor for the participation of civil society. I would also like to add that the appointment of Commissioners with human rights expertise is essential in ensuring a strong and independent NHRCK.

The right to freedom of opinion and expression of public officials

I am concerned that public officials, including Government officials and teachers of public schools, are prohibited from expressing their opinions on the basis that they should remain politically neutral. However, based on the principle of neutrality, I would like to emphasize that no one should be prohibited from expressing an opinion including public officials, especially on an individual basis and after working hours, even if they are members of trade unions.

The above findings by the Special Rapporteur address many crucial issues that continue to require action by the South Korean government. According to the AHRC's information the government has thus far not shown any intent to take the required action to implement the Special Rapporteur's recommendations. The AHRC therefore reiterates the need for the government to begin to address these issues, without which its credibility as a developed, democratic actor in the region will be further tarnished.

The Death Penalty

A series of the child abuse cases have shocked public opinion in South Korea in 2010 and have led to calls for those responsible to be executed. In response, Mr. Lee Gui-Nam, the Minister of Justice, ordered a study into the establishment of new facilities to carry out executions when he visited the Cheongsong correctional institution on March 16, 2010.

The AHRC recalls that while the death penalty remains under South Korean law, and the State already has facilities in which executions can be carried out. However, the State has refrained from carrying out executions for some 13 years, which the AHRC welcomes. The fact that the Minister of Justice is even considering the building of new facilities is a grave concern. The return to the use of the death penalty would represent a significant backward step in South Korea's progress concerning human rights.

When the South Korean government presented its candidature for membership in the Human Rights Council in May 2008, it submitted a national action plan (2007-2011) for the promotion and protection of human rights. Concerning the death penalty, the government pledged to examine current law and practices and consider the desirability of maintaining the death penalty or introduce a substitute punishment. Regretfully, no action has been taken in this regard as of the end of 2010. The AHRC urges the government to make good on its promises to the international community and take action to abolish the death penalty. It can show its commitment to do this by ratifying the second Optional Protocol to the International Covenant on Civil and Political Rights concerning the death penalty. In addition, a draft law of the abolition of death penalty pending at the National Assembly should be adopted.

The government should not make knee-jerk reactions to public opinion when considering, but must consider the validity of the death penalty in general. The AHRC deplores the use of the death penalty and believes that it constitutes inhuman treatment in its own right, but is also concerned about the fact that given that no legal system in the world is perfect, the death penalty leads to irreversible punishment of innocent persons. It has also been shown to not be effective in providing an effective deterrent concerning crimes and is therefore not a practice that is worthy of any society built on the values of justice and democracy. The government of South Korea is urged to abolish the death penalty and instead find ways to address the root causes of crime and ensure justice and reparation for victims.

No protection in government's redevelopment project

The current government has announced that its main focus is on creating a business-friendly environment in South Korea. The AHRC is concerned that the government is giving the priority to business over consideration for citizen's rights. This can be seen most clearly in the many redevelopment projects that have been launched between local government authorities and private companies. The following example, concerning forced evictions and intimidation, shows how such projects are undermining the primacy of rights and the rule of law in the country.

The tenants in the Gocheck traditional business market located in Gocheck Shopping Centre, Gocheck-dong, Guro-gu, Seoul have been evicted since April 2008. They were wrongly informed of their rights by the Guro district administration when they inquired about these. The administration said the market building was not part of the urban plan designed by the administration. However, it was later found out by the tenants that the market is officially protected under the Special Act on Improvement for Traditional Business Markets or Commercial Areas (Special Act), which was enacted in 2006, and which places the market under the urban plan. Under the Act, there are a number of measures to restrict renovations that can be done to such buildings, and any renovation work must be agreed on by the concerned party – the tenants in this case – and the relevant Guro District authorities.

To evict the tenants, the owner of the market building filed a lawsuit at the lower court, which issued an execution writ in favour of the owner. The court recommended, however, that the eviction process should be conducted in consultation with the administration and the tenants. The tenants filed an appeal in opposition of the court decision and the owner filed another lawsuit against the tenants who did not pay the rent for months during protests against the eviction. On 16 April 2010, the vice-mayor of Guro District officially announced that the Gocheck market was part of an urban development plan, but has so far failed to produce an official document.³

While the tenants had been waiting for a response from the administration as well as the results from the court cases, the eviction process had already begun. The eviction involved the use of violence and the police reportedly stood by and let the attacks happen unhindered. During the eviction process, which started in early 2008, it is alleged that a group of thugs hired by Jung Sung E&G, the owner of Gocheck market building threatened the tenants and their customers. They destroyed and stole the tenants' property at the market, assaulting the tenants, following the delivery of an execution writ by the lower court. The fact that some of tenants were not included in execution writ was ignored. The tenants filed a

³ For more information on this case please see the following two statements by the AHRC:
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-142-2010> and
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-246-2010>

complaint to the police who failed to prevent the thugs' actions and identify them so that they could be held to account.

The Gocheck case documented by the AHRC was the first case in which business tenants filed a lawsuit regarding the unjust development process that excludes poor tenants in South Korea, as a result of their depending on an urban plan facility managed by the administration as well as a private company. It shows negligence by the administration authorities concerning urban planning, as well as how violence is being used as a tool to enable the authorities' development projects. The case is also an example of forced eviction in which tenants have not had access to the proper legal process in order to receive due compensation. The administration did not keep to its initial agreement with the tenants, which is one of the main reasons leading to the tenants protesting against the development project.

The administration denied the fact that the Gocheck market was an urban plan facility or public area until the tenants had submitted the relevant documents. In the court process, as there was no clear process regarding reconstruction or renovation for development between the administration and the company, which is legally required according to the Special Act, a mere verbal statement from the company was accepted. It allowed the company to change its plan for development at will. The administration has a duty to ensure the appropriate legal process regarding development plans for urban facilities and apply the legal process including by providing a temporary market for the tenants, with proper consultation with them tenants as well as the company in the cases involving a traditional market, such as Gocheck market. In conclusion, however, the company has used legal loopholes, and succeeded in evicting the tenants before making a clear decision on development plan, which has been allowed as a result of negligence by the administration.

After a long protest by the tenants, the newly elected administration has pledged to provide a loan with low interest for the tenants who want to rent shops for their business near Gocheck market. However, the administration again broke its official promise, saying that they will provide the loan depending on the tenants' credit. This attitude proves that the administration does not have any willingness and moral responsibility to support the poor tenants, as it is practically impossible for the poor older tenants, who are aged between 50 up to in their 80s, to get such credit. In addition, the company recently agreed to provide the tenants with a street market near Gocheck market, but the administration has not allowed this, stating that the area is designated for urban beautification.

The AHRC is concerning by the violence that has gone unpunished, the forced evictions and by the fact that the administration appears to repeatedly be breaking promises made to tenants and South Korean citizens. A series of forced evictions that occurred in November 2010, immediately after G20 submit, are a further example of the loopholes in the domestic legal framework that fail to prevent violence-based forced evictions and ignore the human rights.⁴

⁴ For more information about the recent forced eviction, please see the statement reported by the AHRC: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-246-2010>

Conclusions and recommendations:

The AHRC therefore urges the government of South Korea to take the following key steps as a priority in order to address the most pressing human rights issues facing the country:

- To implement without fail or delay the recommendations made by the Special Rapporteur on the freedom of opinion and expression made as part of his country visit in 2010, as well as all other recommendations by other UN human rights mechanisms;
- To establish a procedure for appointments of commission members for the NHRCK that is in accordance with the Paris Principles;
- To abolish the Article 47 of the Framework Act on Telecommunications;
- To decriminalize defamation;
- To remove all the articles of the Act on Assembly and Demonstration that restrict the freedom of opinion and expression;
- To abolish the death penalty;
- To ensure that local administration's actions are properly monitored, notably concerning all evictions related to redevelopment projects.