SOUTH KOREA: The State of Human Rights in 2011

Overview

In the fourth year of Mr. Lee Myung Bak's presidency, many corruption related cases have recently been reported, with flawed investigations however. While South Korea has a law criminalizing corruption, its scope is limited and narrow, only covering acts relating to official duty.

As reported in our previous report (2010), one right that has seriously deteriorated under Lee Myung Bak is the freedom of expression. This will further worsen with the government's intention to restrict the freedom of expression and opinion over the internet as well. South Korea has a large number of internet users, with a significant amount of communication occurring through the internet. After one particular podcast criticizing the government and President had the highest downloads globally, the Korea Communications Standards Commission (KCSC) introduced an organ with exclusive control over the Social Network Service (SNS) and application for smart phones in early December.

I. Human rights violations by business enterprises

While rights abuses by business enterprises are a serious problem in South Korea, they have not been properly discussed. The long struggle of Ms. Kim Jin Suk in this regard however, as a member of the Korean Confederation of Trade Union (KCTU), has drawn the attention of both the local and international community. The Korean society remains unclear regarding the government's obligations and duties to respect, protect and fulfill human rights in cases involving business enterprises, and Ms. Kim's case may serve as an indicator of the issues involved.

The Hanjin Heavy Industries & Construction Co. LTD, where Ms. Kim has been working, is one of the country's top ship manufacturers, based in Busan, South Korea. When the company expanded its shipyard to Subic Bay in the Philippines in February 2006, the company made an agreement with the trade union on March 14, 2007 for workers fearing dismissal. Ignoring the agreement however, the company started dismissing workers in late 2009, in the guise of voluntary resignation. About 3,500 employees including irregular workers were dismissed, allegedly due to 'financial difficulties'.

Contrary to this explanation, it is known that the Philippine subsidiary of the company was able to manufacture 23 ships in the first half of 2010, whereas not a single order was allocated to the South Korean factory in the same year. After heavy criticism, the

company made an initial agreement for the manufacture of a few ships in the Busan shipyard.

The main problem with regard to layoffs or dismissals is the broad interpretation of the legal definition 'urgent need for management', which is the commonly used justification for dismissals. However, the reason for such urgent need for management was never scrutinized before layoffs or dismissals were made. In fact, they are the easiest way for business enterprises to reduce their overheads. The Local Labour Relation Commission, which has the authority to judge whether or not a dismissal is legal or otherwise, makes decisions in favour of business enterprises using the limited information provided by them. Serious procedural flaws, such as the overlooking of any existing agreements between the company and trade union for instance, are not given much weight by the Commission. Reaching an agreement, regardless of how it was reached, is all that matters. This often results in violence.

The government has an obligation to protect individuals and groups against human rights abuses. While the workers occupied the shipyard and protested since December 20, 2010 against this massive dismissal of workers, the company asked the Busan District Court to issue an eviction letter against the protesters, which was approved on June 13, 2011. Although negotiations between the company and trade union were supposed to start from June 24, the announcement of the court's eviction plan was announced, resulting in the failure of negotiations. In the process of forced eviction, many protesters were assaulted by law enforcement agencies and those acting on their behalf. No action has been taken against them.

Due to South Korea's insufficient social safety nets, workers perceive a loss of employment as a sentence of social death. The continuous support of civil groups for Ms. Kim's struggle is therefore not meant as the support for only an individual, but for all those in such vulnerable positions, with minimal social safety nets.

Due to domestic and international pressure, on October 7, 2011, in order to solve the dispute between the company and the labour union, the Environment and Labour Committee at the National Assembly proposed recommendations that were accepted by the CEO of Hanjin Co, provided that Ms. Kim comes down from the crane tower which she had occupied for the last 10 months. After the new leadership of the union, the negotiations were accelerated and on November 10, both parties finally reached an agreement. Although this particular dispute is solved, the government's obligations in cases of rights violations by business enterprises are still in question.

II. Issues relating to the National Human Rights Commission of Korea

A. Silence-mode continued

After the appointment of the new chairperson of the National Human Rights Commission of Korea (NHRCK) on July 20, 2009, it appears that the NHRCK has increased self-censorship over politically sensitive issues. Leaving aside major issues that the NHRCK had previously focused on, the new chairperson prioritized issues of human rights and business enterprises. For this reason, the NHRCK took part in an international forum in October 2010, where it presented its role in providing non-judicial remedies and making policy recommendations. It then held a similar forum in Korea in October 2011. Despite holding such forums however, the Commission does not speak out or take action against any violations.

The case of Ms. Kim mentioned above is a clear example of this. When the Hanjin Heavy Industries & Construction Co. LTD prevented union members from sending her basic necessities such as food and water, Ms. Kim asked the NHRCK for urgent intervention. Her case was discussed during the commissioners' meeting, but dismissed when the company promised to allow necessities to reach her. Although this promise was not kept, no further action was taken by the NHRCK.

It is also reported that the NHRCK dismissed two cases requesting urgent intervention. The first case involved the alleged surveillance and wiretapping of union activists by Korea Railroad. The NHRCK dismissed the complaint for the reason that it was not under its authority. The second case, involving a group of protestors against redevelopment facing power cuts, was dismissed because the Korea Electronic Power Corporation is not a government institution.

B. Suspicious termination and disciplinary punishment

An NHRCK investigating officer and trade union vice president, working with the Commission since its establishment, and who was critically outspoken over the arbitrary management of the chairperson, did not have her contract renewed in February 2011. It is widely held that this was due to her union activism as well as critiques on the mismanagement of the chairperson. This is substantiated by the disciplinary action imposed on staff supporting her: 11 staff members picketing in front of the NHRCK building to protest the discontinuance of her contract received disciplinary punishment; four staff were suspended while seven had their salaries deducted. The reason given for this punishment was a 'duty to uphold dignity and prohibition of collective action' (articles 63 and 66 of the State Public Officials Act). The NHRCK is clearly on a path to becoming an entity for which human rights exist only on paper.

Another matter of concern is the lack of diversity of commissioners at the NHRCK. Since many commissioners have a background in law, the standards of whether or not a complaint is permissible are decided by existing laws despite the fact that they may be incompatible with international human rights instruments. Additionally, if the NHRCK voluntarily limits its role and mandate, it will mitigate its reason for existence, and will become little different than various human rights bureaus under other ministries, some of which are, in fact, in a better position to influence legal reform.

III. Legal attacks on rights activists

On January 19, 2009 a group of people occupied the top of a building in Yongsan, Seoul, protesting against their forced eviction and demanding proper compensation. The special police force was deployed and whenever they attempted to raid the building, the protesters threw Molotov cocktails at them. The police then decided to forcibly disperse the protesters despite being aware that the watchtower built by the protesters was full of thinner. In this process, five protesters and one police officer were killed by the fire. Due to the use of Molotov cocktails, the police as well as conservative newspapers and politicians labelled the protesters as 'terrorists'.

After this 'Yongsan Incident' took place, a committee consisting of hundreds of civic groups represented by two rights defenders, Mr. Park Lae-gun and Mr. Lee Jong-hoi, was organised and held commemoration ceremonies. Here, relatives of the deceased had the opportunity to voice out why their family members had no choice but to protest against the forced eviction. They held meetings to discuss how to organise peaceful assemblies. Such assemblies and demonstrations were held once a week, asking for thorough investigation and punishment of those responsible for the deaths, as well as due process in the redevelopment approach. Such activities continued for about three months after the incident. Meanwhile, an arrest warrant was issued against the two rights defenders and they were prosecuted for criminal offences.

On January 24, 2011, the two were given a three-year and one month jail sentence suspended for four years and a two-year jail sentence suspended for three years respectively, by the district court. According to the judgment, they were found guilty of organising assemblies and demonstrations that clearly pose a direct threat to public peace and order, organising banned assemblies and demonstrations, organising outdoor demonstrations after sunset and obstructing general traffic. The planning meetings to organise commemoration ceremonies for the deceased were also interpreted as a communal criminal offence. They appealed, but their conviction was upheld on May 18.

IV. Conscientious objection

Although conscientious objectors against military service were imprisoned for several decades, since 2001 the situation has slowly been changing. While some progress was made between 2004-2008, the rule of the Lee Myung-bak regime has reverted back to a conservative outlook.

A. Background

According to the information obtained from the NGO World Without War, conscientious objectors against military service in Korea have been going to prison for the past several decades, yet it was only after 2000 that the issue became known to the public. That the cumulative number of conscientious objectors who served prison sentences exceeded 10,000 at the time profoundly shocked Korean society. Long considered an issue for Jehovah's Witnesses only, conscientious objection became a social 'movement' with the public declaration of the first non-Jehovah's Witness conscientious objector, the pacifist and Buddhist Oh Tae-yang in December 2001. In early 2002, the "Korea Solidarity for Conscientious Objection" (KSCO) was formed by 36 civil and social organizations. They began to raise public awareness about conscientious objection through various activities such as discussion forums, lectures, public hearings, campaigns, and articles.

The criticism and outcry against the conscientious objection movement was tremendous at first. The idea of national security was so absolute in the anti-communist Republic of Korea that more armament was considered socially 'good', while any kind of counter-argument was severely repressed. In South Korea, society went through a series of militarist regimes where a 100 percent enlistment rate was set as a social objective and the conscription-based military system was sanctified. These circumstances made it difficult, if not impossible, to reflect and discuss on the military as state-monopolized violence, as well as different points of view based on democracy and tolerance. A movement for change however, was slowly created by the tremendous amount of jail time and pain that conscientious objectors endured. This was coupled with the efforts made by both of the recent conscientious objectors who publicly announced their objection, and their supporters.

B. Gradual change

Afterwards, the duration of the usual prison term sentence for conscientious objectors was cut down from three years to one and a half. In 2002, a case of conscientious objection was brought to the Constitutional Court for review for the first time, and in 2004, a conscientious objector received a verdict of not guilty for the first time. In late 2004, assemblymen Mr. Im Joing-In and Roh Hoe-Chan each submitted a Military Service Act Amendment Bill to the South Korean National Assembly. In late 2005, the

National Human Rights Commission of Korea announced a recommendation to introduce alternative service. This was the first time for a Korean national institute to do such a thing. In addition, the international community, upon recognizing the situation of Korean conscientious objectors, began to apply pressure on the Korean government. For example, the UN Human Rights Committee repeatedly ruled that the Korean government should consider alternate service for Korean conscientious objectors.

Thanks to these social changes, it appeared that the imprisonment of conscientious objectors which had continued for more than 50 years after liberation, might end in the very near future. On September 18, 2007, the Ministry of National Defense (MND) announced plans to allow conscientious objectors to perform alternative civilian service, which was supposed to start in January 2009. In addition, at the Universal Periodic Review held in Geneva on May 7, 2008, the Chief of Human Rights Division of the MND confirmed the position of Korea to introduce alternative service for conscientious objectors. But once the conservative Lee Myung-Bak government took office, the MND suddenly changed its position. Having made little effort to prepare for alternative service with an excuse of 'national consensus,' the MND publicly announced it would 'nullify' the introduction of alternative service for conscientious objectors in December 24, 2008. Their supposed basis for the decision was an opinion survey which was a very small part of the research commissioned by the Military Manpower Administration in which there were more responses against alternative service. While the 500 page research paper concludes that alternative service must be introduced, the MND arbitrarily chose to use only part of the survey data for their own interests. The hard-fought changes by civil society were so easily overturned by the regime change. Up until now, more than 15,000 have been imprisoned for their objection to military service since Korea's liberation from Japan in 1945. And in particular, more than 5,000 have gone through imprisonment since 2000, the year when the issue of conscientious objection began to be discussed in public.

Yet it was not only the Conscientious Objection (CO) movement participants who thought that the situation was unjust, but the militaristic and nationalistic Korean society had been changing slowly over the course of time and as the CO movement has continued. In the summer of 2008, the NHRCK officially expressed concern and sent a statement to MND, urging it to quickly introduce alternative service for conscientious objectors. There have been a series of requests with the Constitutional Court for a determination of constitutionality of the Homeland Army Reserve Act. Furthermore, followed by two individual communications in 2010, the Human Rights Committee expressed its views on 100 individual communications in March 2011.

In the meanwhile, a petition of adjudication on the constitutionality of article 88(1) of the Military Service Act (stating that the person who refuses to serve in the army without justifiable reason shall be imprisoned for not more than three years with prison labour) was filed at the Constitutional Court and its controversial judgment was delivered on August 30, 2011. The Court did not find the article to be unconstitutional, maintaining

that it does not violate the principle of equality or article 6(1) of the Constitution, regarding respect for international law.

The controversial reasoning made by the court compares criminal punishment for conscientious objectors with the sacrifice of the freedom of conscience and concludes that the article does not violate the freedom of conscience because military service is very important to public interest. However, the court should ensure that in the case of a conflict between a constitutional right and constitutional duty, a harmonious way to implement both is found, rather than the sacrifice of one.

Secondly, the Court concludes that the article is not discriminatory because it applies to everyone equally. However, it fails to take into account that a particular group of people are criminally punished because the government has not introduced alternative military service for those who object on the basis of conscience. In addition, the Court also concluded that the International Covenant on Civil and Political Rights (ICCPR) has neither acknowledged the right of conscientious objectors nor are there any international human rights laws codifying the right. While this right may not be 'written' into the ICCPR, the Court is overlooking the Human Rights Committee's understanding and observations on the topic.

V. Problematic article relating to migrant workers

Many migrant workers come to South Korea under the Act on the Employment of Foreign Workers. Under this Act, they are legally allowed to stay in the country for five years, but are restricted in the number of times their workplace may be changed. This particular article of the Act received considerable criticism, making many migrant workers illegal. Although the article was submitted for review to the Constitutional Court, its judgment of September 29, 2011 concluded that the article does not violate the fundamental right of the applicants.

VI. Torture and confessions

Under the military dictatorship in South Korea, ignorance of due process and the routine practice of torture by investigating authorities such as prosecutors, intelligence agents and police officers was a key problem. In cases of espionage, the mindset of authorities carrying out the arrest was that they had a limited time in which they could hold the suspect, making it necessary to obtain a confession as quickly as possible. As a result, the authorities used torture or ill treatment during interrogation and suspects were often denied access to lawyers. Confessions obtained through torture were accepted in court without being questioned. The social impact of this was a public tolerant to the ill treatment of the accused if the matter was related to 'national security'.

After the overthrow of the military regime, through several amendments of criminal procedure law in Korea, the rights of the accused are deemed to have been strengthened to a limited extent.

The definition of torture and ill treatment however, has not been codified in accordance with international law. As a result, torture is still used during interrogation by agents including the investigating police in ordinary police stations.

For example, the National Intelligence Service (NIS) arrested and detained five persons and investigated a dozen others under the National Security Act. During the interrogation, authorities forced or threatened Mr. Lee and Mr. Im to confess, allegedly humiliating and threatening them. Authorities are apparently not trained to deal with the accused, who enjoy the right to remain silent, despite it being one of the basic principles in the Criminal Procedure Act.

Three men accused of robbery were arrested and tortured in the Yangcheon police station during their interrogation in February 2010. The investigating police threatened them into confessing to other robberies as well. For the purposes of looking good and chances of promotion, the police station then reported the resolution of some 110 unsolved robbery cases to higher authorities. Later, the three torture victims filed a case asking for compensation, in which the court ordered the government to pay compensation on September 23, 2011.

The Yangcheon police officers responsible for the torture and ill treatment were suspended and indicted by the prosecutor at the time of the incident. The supervising authority meanwhile, received the deduction of two months' salary as disciplinary action for negligence on supervision and management over junior police. This action was quashed by the court in August however, on the grounds that only partial, abstract negligence was found, not any specific behaviour found to violate any law.

Even though South Korea is a state party to the UN Convention against Torture (CAT), it has so far refused to codify the definition of torture and ill treatment in its Criminal Act, leaving a serious gap between the international and domestic laws. This results in the definition of torture being narrowly interpreted. Moreover, the government has stepped back from its pledges of May 2006 at the Committee Against Torture, where it said it would revise its law.

VII. 'Security Service Industry Act' shifts state responsibility to third party

Previously, it was easy to identify which government--including law enforcement agents--action violated which human rights, and to hold those responsible accountable. Now however, after the creation of the Security Service Industry Act, the local government contracts security agencies to undertake certain tasks, making it difficult to identify those responsible because the omission to act by the government needs to be proved.

This began with the government's initiation in 1976, due to the limited police force and budgetary allocation, to legally authorize a third party to protect important national facilities as a quasi law enforcement agency, acting on behalf of the police. Through this legislation, thugs were mobilized to evacuate the poor from their residence in the process of redevelopment and used by the local government to evacuate vendors during the Seoul Olympic Games in 1988.

Although this law received much criticism and many amendments were made, such thugs continue to be hired by corporations in labour disputes, redevelopment projects and so forth. In most such instances, the result is extreme violence. The continuous creation of violence is the easiest way to drive away victims and complainants (residents of a redevelopment project for instance) with little compensation. It is also the easiest way for law enforcement agents not to be directly involved, allowing them to be exonerated from criminal liability if a lawsuit is filed.

This malpractice continues because of the considerable economic benefits for the thugs to gain, with little to lose. Furthermore, the thugs sometimes hire a vulnerable group of people such as persons with disabilities, students or elderly who need money, and let them do the job. The dispute then seems to be a dispute between vulnerable groups. This also makes it easy to file a criminal case against the residents, who are often psychologically unstable due to the long period of exposure to violence. Moreover, the thugs assault or use violence with the consent or acquiescence of law enforcement agencies, which in fact would make the practice fall under the international definition of torture.

As long as the thugs are in collusion with law enforcement, this practice cannot be eradicated.

VIII. Absence of domestic mechanism to implement international principles

The UN Human Rights Committee (HRC) has issued opinions concerning 10 human rights cases in South Korea. The following cases were found to be in violation of the ICCPR by the South Korean government since 1994: Sohn v. Republic of Korea, Kim v. Republic of Korea, Park V. Republic of Korea, Kang v. Republic of Korea, Shin v. Republic of Korea, Lee v. Republic of Korea and Yoon & Choi v. Republic of Korea.

After the communication of Mr. Yoon & Choi v. Republic of Korea regarding conscientious objection, hundreds of such communications were submitted. The views by the HRC were released in March 2011, finding that the South Korean government violated the ICCPR. Despite this, the South Korean government has taken no action in the individual cases, proffering no remedies to the complainants.