



THE STATE OF HUMAN RIGHTS IN REPUBLIC OF KOREA - 2008

A YEAR OF HUMAN RIGHTS REGRESSION AND STATE AGGRESSION

AN OVERVIEW OF THE SITUATION

South Korea has been viewed in recent years as one of the most developed and democratic States in Asia. However, 2008 has seen a new government take power and begin the erosion of many of the fundamental pillars of democracy and the human rights that underpin it. In particular, the use of force against popular demonstrations and efforts to limit the freedoms of assembly, expression and opinion, have given rise to concerns within and beyond the country. The police and prosecutors, in particular, have abused the powers provided to them under the law.

While the severity of human rights abuses may be far higher in other countries in Asia, the fact that one of the region's countries that had shown leadership in the protection of rights and freedoms is now regressing needs particular attention, as it may have ripple effects beyond its borders.

While the new administration has made policies that favour industrial conglomerates and the rich, it has not provided any protection for the poor. It is feared that this is the beginning of a trend, in which the justice system is misused to the detriment of the rule of law and in favour of the rule by law.

1. CONCERNS THAT HAVE BEEN HIDDEN ARISE AFTER POLITICAL CHANGES

Mr. Lee Myong-bak, a former CEO and Seoul Mayor, was elected President in election held in December 2007. Before his inauguration, the Presidential Transition Committee was formed to make a plan for changes to government institutions and policies on the grounds of his presidential pledges. Out of these changes, the committee hinted that it would put the National Human Rights Commission of Korea (NHRCK) under the direct control of the president. It insisted that the NHRCK breached 'separation of powers' according to the Korean Constitution.¹

This plan drew both national and international attention, as it would constitute a serious setback for human rights as well as the independence of the NHRCK, in a country where government institutions are

¹ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2719/>



already fragile and lacking in independence. Due to the pressure from inside and outside of the country, the Transition Committee finally withdraw this plan.² Besides, the Transition Committee also established several other plans, such as the creation of a national waterways and canal system and education reforms. However, such plans have been criticised due to the lack of proper discourse with experts in each field.

In parliamentary elections held on April 9, 2008, the Grand National Party to which the President belongs took the majority. After these two main political changes, civil society alleged that channels of communications with government officials have been obstructed and officials have been also hesitant to communicate with civil society concerning sensitive issues. These changes have been interpreted as the President's dictatorial style of governance rather than his strong leadership in every sector.

Mr. Lee made several business-friendly policies but at the same time, he has restricted civil and political rights. On August 15, on Korea's Independence Day, several CEOs who had been imprisoned for economic crimes such as tax fraud and other crimes were given amnesty³. However, the freedom of assembly and demonstration and freedom of expression and opinion, which are essential components of a working democracy, have been restricted.

For the first year as president, his economic policies have been criticised as favouring only the rich. The justice delivery systems such as the police and prosecution have voluntarily obeyed or been subservient to the new administration. The judiciary has also shown that it has not been free from political bias.

2. WHEN AN INTERNATIONAL AGREEMENT RISKS VIOLATING INTERNATIONAL HUMAN RIGHTS LAWS

After his inauguration on February, the President Mr. Lee flew to the United States of America (USA) to have a meeting with President George W. Bush. Before this meeting, the governments had come to an agreement to restart importing US beef, with several changed conditionality clauses, such as the expansion of the concerned beef products and the ages of livestock used, as compared with the previous agreement, which contained greater restrictions and therefore better health protection for Korea's people. People were concerned about their health due to the fears concerning risks associated with Bovine Spongiform Encephalitis, or Mad Cow Disease. The changes in the agreement prompted public demonstrations by persons holding candles asking for a renegotiation to secure people's health and strengthen the national quarantine system.

The Lee administration's failure to communicate properly with the public resulted in escalating demonstrations, and a stage was setup for everyone to be able to express their frustrations and criticism of the government policies. The government reportedly considered the protests as resulting from agitation by anti-US groups or leftists. This later encouraged the prosecutor's office to prosecute leading demonstrators under the National Security Act.

² Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2758/>

³ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1650/>



Due to popular pressure, the Korean government eventually changed some conditions in the agreement during further negotiations - the Quality System Assessment (QSA) scheme was adopted to guarantee the beef to be from cows under 30-months old. However, protesting continued as this was not enough to placate them. It is worth noting that the US only distributes meat from cows under the age of 20 months for its own domestic consumption. The Ministry for Food, Agriculture, Forestry and Fisheries (MFAFF), in charge of the agreement, published it in the government gazettes on June 25, 2008, when the agreement came into effect. Whereas the Japanese government inspects all imported beef from the USA, the Korean government only tests below 3 percent of all imported beef for Mad Cow Disease.

Mr. Lee's administration has simply advertised the US beef as being safe and campaigned to encourage people to consume. At the same time, it has labelled the protesters as being misled by masterminds, rather than engaging in dialogue or strengthening inspection systems to protect people's health.

During this whole process, it has surfaced that there is no established domestic process for monitoring the content of agreements to ensure that they are in line with Korea's obligations under treaties. The agreement has several articles that have failed to respect, protect and fulfil the enjoyment of the right to health.⁴

Article 60 (1) of the Constitution states that, "the National Assembly shall have the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security; treaties concerning important international organizations; treaties of friendship, trade and navigation; treaties pertaining to any restriction in sovereignty; peace treaties; treaties which will burden the State or people with an important financial obligation; or treaties related to legislative matters". However, this agreement had been never discussed at the National Assembly.

Besides this, the agreement-making process has been lacking in transparency. A civil society organisation has asked for relevant documents concerning the agreement from the Ministry of Foreign Affairs and Trade and MFAFF, but they have not been provided, without a reason being given.

What if the rights of people enshrined in international human rights laws to which the Korean government is a State party are nullified by agreement the government enters into?

3. STUDENTS HOLD CANDLELIGHT VIGILS

When the US beef agreement became known to the public in April, 2008, middle-school students started holding candles in protests in Cheongyecheon, near Seoul City Hall. These students began the action because they feared being the first consumers of the US beef in school meals. Teachers prohibited them from holding these protests and monitored them to see if their students were participating. The police also visited the school and investigated those who took part in the protests. Students submitted a complaint to the NHRCK alleging that their freedom of assembly and association as well as freedom of speech were being violated.

⁴ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1604/>



Meanwhile, a group called "People's Conference Against Mad Cow Disease", a coalition of about 1,700 organisations nationwide was formed on May 6, 2008, to regularly organise candlelight vigils to provide a platform for people to express their views and to gauge Korean's views on the contents of the agreement. A number of people volunteered for the candlelight vigil including professionals such as photographers, lawyers, medical doctors and food providers.



The candlelight vigil was broadcast live through the internet. Experts also provided interpretation on the agreement and pointed out the failure of the government to protect people's health, comparing the deal to a similar agreement by Japan, notably on the issue of the inspection system.

Amateur photographers assembled together as the 'Civil Press', taking photos of the marches and any incidents of police violence. Others volunteered to provide medical treatment as and when needed. Small shop owners offered free noodles, coffee and tea to the participants, while farmers offered watermelons and other agricultural products. Human rights activists wore vests indicating 'human rights monitoring group' and distributed flyers showing possible actions to be taken if they were arrested, as well as encouraging demonstrators not to respond when provoked by riot police. Staff from the National Human Rights Commission were also present at the demonstrations to monitor any abuses of human rights. All of these voluntary activities continued daily for over 100 days.

The police and prosecutors were mobilised to suppress the demonstrations, leading to concerns related to the right to information, the freedoms of assembly and demonstration, the freedoms of opinion and expression, the unnecessary use of police force and the misuse of power by the prosecutor's office.

4. COUNTER ACTION BY THE GOVERNMENT AGAINST PEOPLE

Theoretically, the freedoms of assembly and demonstration are guaranteed under the Korean Constitution. Article 21(1) of the Constitution reads, "All citizens shall enjoy freedom of speech and the press, and



freedom of assembly and association" and the same article's section (2) says, "Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognised".

However, civil society had to organise cultural festivals due to the Act on Assembly and Demonstration preventing assembly and demonstrations. The Act says that everyone who wants to hold an assembly and demonstration, has to inform and get permission from the police. Not only does the Act itself restrict the rights to assembly and demonstration but it also breaches the Constitution as well as provisions in the International Civil and Political Rights (ICCPR), to which the government of South Korea is party.

In practice, the police did not allow people to hold assemblies and demonstrations on the pretext of public order. However, the police have failed to provide an explanation about this arbitrary decision based on the argument of upholding public order. The police give permission to one side that supports government policy, not to the other side that oppose it. They also communicate their decision to organisers only a few hours before the scheduled assembly. The Act has been arbitrarily misused by the police at their own discretion, making it function as a permission system. The Act says that no assembly and demonstration is permitted before sunrise and after sunset except in festival such as cultural festival or performance.

After repeated failures in getting permission from the police, organisers called the candlelight vigil a cultural festival in order to avoid it being illegal, however the police considered it as being a demonstration on the grounds that a political message was involved. This is how the candlelight vigil became branded as being 'illegal' by the police. While people continued taking part in the vigil, the police blocked all gates of the subway station nearby where the assembly was supposed to be held and trains were not allowed to stop there.



Frustrated by the government's response to the people's demands and wanting to deliver their messages to the President directly, the demonstrators began a march. The police blocked all roads with police buses to the Cheongwadae, the Presidential Office. In general, people held peaceful demonstrations during the whole period of protest, which lasted over three months, except for a few days when some protestors tried to move police buses and damaged some of them in the process. However, police interpreted the assembly



and demonstration as being technically illegal and, began arbitrarily arrested people for violating the Act on Assembly and Demonstration and Road Traffic Act.⁵ Police also indiscriminately assaulted people with police batons, shields and their boots. Fire extinguishers and water cannon were also used in ways that constituted violations of crowd-control regulations.⁶

During this whole process, the police hid their name tags to make identification impossible.⁷ To worsen matters, on August 5, a group of specially trained officers for the special purpose of arresting demonstrators began operating. The police also proposed a plan under which money would be paid to officers depending on the number of people they arrest and calculated retroactively into their salary beginning from May 2. According to the plan, officers were to be paid 20,000 KRW (USD 20) for each person arrested and investigated without leading to detention and 50,000 KRW (USD 50) for a person arrested and investigated resulted in detention. This initial plan was modified to a system with a different name but similar contents, accumulating the number of arrests and providing rewards for officers at year's end. Likewise, the police were encouraged to arrest people to assist their chances of promotion.⁸

The police arbitrarily arrested people who took part in the vigil on the grounds that they did not get permission from the police. If a protester even simply stepped on the road, he or she was arrested under the Road Traffic Act. Police equipment such as shields, batons, water cannon and fire extinguisher had been used not defensively, but to attack protesters.⁹

The amended Criminal Procedure Act came into force this year with a view to promoting and protecting human rights. However, during the vigil, the police simply ignored these guidelines and regulations in the process of forcible dispersals of demonstrators. The police also forced women protesters to take off their bras during detention in police stations.¹⁰ In spite of thousands of protesters being injured, only one policeman caught on film kicking a young woman in the head has been arrested, with two police commanders being dismissed and four other police officers receiving various administrative forms of punishment concerning the same incident. This low level of accountability encourages even more violence by the police. However, the government agreed to the recommendation made by Canada during the Universal Periodic Review concerning the necessity for all allegations of torture and ill-treatment by law enforcement officers to be investigated. The government must ensure that it now makes this a reality in practice rather than simply words expressed at the United Nations.

Meanwhile, in a symbolic action, all 14 members of Human Rights Advisory Committee of the National Police Agency resigned, to demonstrate their strong protest and concern about the excessive use of force by police in handling the protesters. The Committee, led by Chairperson Mr. Park Kyung-seo (the former Human Rights Ambassador of Korea as well as the former Commissioner of the NHRCK), consisted of 14 prominent legal experts as well as civic leaders.

5 Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1554/>

6 Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1570/>

7 Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1641/>

8 Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1643/>

9 To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

10 Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1658/>



4.1 ATTACK ON LAWYERS PROVIDING LEGAL ADVICE

An organisation consisting of lawyers took part in the protest to provide legal advice to those arrested, as and when required, and to monitor human rights violations by the police. They wore a vest plainly identifying themselves as "A Group of Lawyers Monitoring Human Rights Violations."

Whenever people were arrested, the lawyers were not allowed to talk to them by the police, despite identifying themselves as lawyers. Instead, those arrested were sequestered in police vehicles at the site of the protest. The lawyers had to wait for a phone call or message from the police station from the arrested individuals before being allowed to visit them – which only occurred long after their arrests.

When forcibly dispersing protestors, the police ignored procedures for arrest that are stipulated in both the Korean Penal Code and its Procedure Act. Lawyers identifying themselves and appealing against an illegal arrest were also arrested along with the demonstrators. Attorney Ms. Lee Jae-jung was beaten with a police shield several times, arbitrarily arrested twice, illegally detained and later released. Even though she stated she was a lawyer, it proved to be of no use.¹¹

Whenever the police forcibly dispersed protestors, their actions often resulted in injuries caused by police shields and batons. The case of Mr. Lee Joon-Hyung, another lawyer, is one example. At 2 a.m. on June 26, when the riot police were chasing protestors with their police shields held horizontally, an unidentified riot police officer hit Mr. Lee on the forehead with his police shield, knocking him unconscious and resulting in a serious injury that required hospitalisation for eight days. As a result of this attack, his skull and eye socket sustained fractures, and there were injuries to his entire face. Bruises also covered his whole body.¹²

4.2 ATTACKS ON JOURNALISTS

Journalists were not protected from attacks by the police during the protests, even though they were wearing helmets and/or armbands that clearly identified them as being members of the press at the time of the attacks. Even though they verbally told the police they were journalists the assaults continued nonetheless.

In addition to injuring journalists, their camcorders and video cameras were damaged by the police to such an extent that the equipment was inoperable. Mr. Ha, from the newspaper 'The hankyoreh' said that his camcorder was intentionally twisted and broken by the police so that he could no longer film those who were beating him and the police's violent response to the protests on June 29. Mr. Kim, of Voiceofpeople, said that journalists' equipment has been damaged by the police's use of water cannons and fire extinguishers directed at journalists.

¹¹ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

¹² Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2925/> and a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>



Why have these tactics now been employed by the police? The police only rarely targeted journalists at protest rallies in the past, but under the new government of President Lee, the police have blocked the path to those who were arrested or injured, or the police put their hands over the lens of the journalists' cameras. Moreover, Mr. Kim also said that a special unit of the police used at the rallies to arrest protesters is trained to block journalists from covering the event by surrounding them or pushing them.¹³ Several journalists were even beaten by the police. The police later changed these tactics, using their shields to block photographers from taking photos.

4.3 ATTACKS ON VOLUNTEER MEDICAL WORKERS

During the protest, several people volunteered to provide medical treatment either to the protestors or to the injured police. They also wore clear identification markers indicating that they were medical staff. However, they were also attacked by the police during the forcible dispersal of protestors. Even though several medical staff were attacked by the police, they did not lodge a formal complaint or bring a legal case against the police because they do not want to jeopardise their work at future rallies to serve people in need.¹⁴

4.4 ATTACKS ON ORGANISERS

When the government announced the beef agreement in the gazette on June 25, about 1,000 people including Mr. Ahn Jin-geol and Ms. Yoon Hee-sook attended a press conference criticising the government's gazette. At 3pm, the police started arbitrarily arresting people on the spot, including Ms. Yoon and Ms. Lee Jeong-hee, a Member of Parliament and a 12-year-old girl. Seeing the arrest of the minor, Mr. Ahn appealed against this arrest but he too was arrested. Mr. Ahn and Ms. Yoon were later accused of violations of the Act on Assembly and Demonstration and Road Traffic Act.¹⁵

Arrest warrants were also issued for six people on June 27: Mr. Park Won-seok and Mr. Han Yong-jin, co-chairs of current affairs of the People's Conference Against Mad Cow Disease; Mr. Kim Gwang-il and Mr. Kim Dong-gyu, team leaders of organising of the People's Conference Against Mad Cow Disease; Mr. Paik Eun-jong, vice president of the internet cafe Anti-Lee Myung-bak; and Mr. Baik Seong-gyun, president of the internet community Minchincow.

Since July 5, they sought sanctuary in Jogye Temple, a Buddhist temple in the centre of Seoul, and could leave without being arrested by the police, which had maintained 24-hour patrols around the temple. Since then, another person - Mr. Gwon Hye-jin, general secretary of Hung-Sa-Dan Education Movement

¹³ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

¹⁴ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

¹⁵ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2924/>



headquarters - joined them after an arrest warrant was issued for him on July 10. They were charged under the Act on Assembly and Demonstration and the Road Traffic Act.

On October 30, those who in the Buddhist temple escaped and went into hiding and Mr. Park Won-seok, Mr. Han Yong-jin, Mr. Kin Dong-gyu, Mr. Paik Eun-jong and Mr. Gwon Hye-jin were arrested by the police at 1:30am on November 6. The police also arrested Mr. Oh Jong-ryeol, 70, and Mr. Ju Je-jun, 38, who are also members of KSPM, for organising an illegal assembly and demonstration on November 14. Mr. Kim Gwang-il and Mr. Lee Seok-heng, Chairperson of Korean Confederation of Trade Unions (KCTU) were still hiding as of mid-December 2008.

At 5:50pm on 30 June 2008, about 40 police officers came to the office of Korea Solidarity of Progressive Movement with a seizure and search warrant and arrested Mr. Hwang Soon-won, the director of democracy and human rights at the organisation. The reasons given for his arrest were: planning an illegal assembly and demonstrations. After his arrest he was interrogated at the Jong-ro Police Station.

Police also raided the office of the People's Conference Against Mad Cow Disease that had temporarily used the first floor of People's Solidarity for Participatory Democracy (PSPD), and the office of Korea Solidarity of Progressive Movements (KSPM), a member of the coalition, on June 30.¹⁶ At the time of search and seizure, the police had allegedly failed to follow the required procedures.

Mr. Ahn was released on bail on August 11 and Ms. Yoon and Mr. Hwang were released on bail on September 10. Their cases are currently pending before a court. Meanwhile, the Seoul Central District Court decided to ask for adjudication on the constitutionality of article 10 of the Act on Assembly and Demonstration by the Korean Constitutional Court on October 9.

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Two mothers of children created a web site in order to share information on how to raise their children and food. During the period of vigil, they also took part with their children, using strollers. After the vigil, the police investigated them. Some politicians and conservative newspapers stated that the mothers who brought their children to the protests are child abusers. The police also announced that they would investigate them for child abuse.

¹⁶ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2924/>



Ironically, during the session of Universal Periodic Review held on August 13, when being asked by the government of Algeria whether guarantee shall be provided for the freedom of association and assembly in law, the Korean government replied that it was acceptable.¹⁷

5. RECOMMENDATIONS BY THE NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission has adopted recommendations regarding the candlelight vigil on October 27. They are as follows:

1. The National Human Rights Commission of Korea (NHRCK) recommends that the Minister of Public Administration and Security give a warning to the Commissioner General of the Korea National Police Agency regarding some acts of excessive violent suppression by the police in the process of suppressing candlelight demonstrations, thereby causing injuries of some demonstrators.
2. To prevent recurrence of human rights violations in demonstrations, the Commission recommends that the Commissioner General of the National Police Agency adhere rigidly to defence-centred policies which guarantee citizens' physical safety.
3. The Commissioner General of the National Police Agency is held accountable for human rights violations committed during the suppression operations around Anguk-dong Rotary on the morning of June 1, 2008 and in Taepyungro and Jongro around midnight on June 28, 2008. The Commission has recommended that he take disciplinary measures against the chief commissioner of riot police and the commander of riot police regiment 4 of the Seoul Metropolitan Police Agency.

¹⁷ UN Doc. A/HRC/8/40: http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/KR/A_HRC_8_40_RoK_E.pdf



4. As it was recognised that demonstrators, residents, and a large number of civilians experienced traffic difficulties due to extensive traffic blocking measures taken by the police around the site of demonstrations, the Commission recommends that the Commissioner General of the National Police Agency not block traffic confirmed to have connection with the demonstrations.
5. The Commission recommends that the Commissioner General of the National Police Agency provide legal provisions beyond ministerial regulations on factors that may inflict serious physical injuries upon a human body, such as the maximum pressure or the nearest distance to be observed when water cannons are to be used.
6. The Commission recommends that the Commissioner General of the National Police Agency not deploy a fire extinguisher directly at a person and use it only for its original purpose of extinguishing fires; the powdered gas emitted by fire extinguishers has the potential to inflict physical harm upon a human body and the smoke screen formed by the ejection of fire extinguishers may induce violence by concealing violent acts by the police.
7. The Commission recommends that the Commissioner General of the National Police Agency take steps to prevent acts of throwing by the police, as objects thrown at unarmed demonstrators have a high potential for causing harm.
8. The Commission recommends that the Commissioner General of the National Police Agency discontinue the customary practice of forcing arrested persons to provide a signed written statement and that the form of bansungmoon (a statement of regret of one's conduct) be examined; both practices have been indicated as violating the Law on Assembly and Demonstration.
9. The Commission recommends that the Commissioner General of the National Police Agency ensure that all riot police officers attend to their guard operations in uniforms that have certain marks attached to them so as to facilitate identification.

However, these recommendations were met with an immediate and complete refusal from the government. In a press release on October 29, the Korea National Police Agency (KNPA) claimed that the Commission's findings about the candlelight protests are partial. The KNPA stated that the Commission's findings are based on "a few exceptional cases of police abuse" and did not take into consideration that the candlelight protests were "illegal and violent". As before, the police parroted in the press release that they will protect and support a peaceful legal protest, while firmly dealing with illegal and violent protests "in accordance with laws and principles".

During the parliamentary audit on November 3, Prime Minister Mr. Han Seung-soo and Justice Minister Mr. Kim Kyung-han also refused to accept the Commission's recommendations with similar reasons given by the KNPA. Prime Minister Mr. Han Seung-soo further said that he would accept the Commission's findings only if they are made "appropriate."



Interestingly, the Korean government gave the same opinion in reaction to a recent Amnesty International report¹⁸, which confirmed the Korean police's use of unnecessary and undue force against protesters.

To avoid similar allegations by the police and to ensure the impartiality and accountability of its inquiry as an independent government agency, for almost three months, the Commission in fact carefully inquired into about 130 petitions relating to allegations of police abuse during the candlelight protests, listened the testimonies of both protesters and police and strictly dealt with relevant evidence, before giving a final conclusion. The significant criticism from both inside and outside the country has fallen on deaf ears, however.¹⁹

The credibility of the national human rights institution lies in its capacity to deal without fear with the State authorities that violate rights. A national human rights institution that would not condemn the violations of rights by State agencies does not deserve to bear the name of a national institution for the protection of rights. The Paris principles on which the national institutions are built expressly state that the State should guarantee and respect the independence of such institutions.

The prime minister and justice minister, speaking on behalf of the government, expressed the political perspective of the government. Therefore their rejection of the recommendations made by the NHRCK will be seen as an attempt by the government to undermine the role and function of the Commission. Since the recommendations relate to taking serious action against errant police officers, these officers are likely to see these high ranking government officials' statements as an expression that the government will not carry out the recommended measures. The encouragement of errant police officers and the discouragement of independent national institutions by the government will only spread demoralisation and pessimism.²⁰

6. FREEDOM OF OPINION AND EXPRESSION

6.1 CONTROL OF MEDIA

President Lee appointed Mr. Choi Si-jung as the CEO of the Korea Communications Commission (KCC) on March 26. It is well known to the public that Mr. Choi is a mentor to the President. Mr. Choi asked for cooperation from the chair of the board of Korea Broadcasting System (KBS) to dismiss its CEO, Mr. Jeong Yeon-ju on March 27.

¹⁸ Amnesty International, "Policing the Candlelight Protests in South Korea", ASA 25/008/2008: <http://www.amnesty.org/en/library/asset/ASA25/008/2008/en/7866408a-9395-11dd-8293-ff015cefb49a/asa250082008en.pdf>

¹⁹ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1751/>

²⁰ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1755/>



Meanwhile, after the US beef agreement was aired by PD Notebook, a weekly television magazine programme produced by the Munhwa Broadcasting Corporation (MBC), producers of the programme were targeted. The programme features segments tackling prevalent issues in the country. On April 29, 2008, PD Notebook featured an interview with Ms. Robin Vinson, the mother of an American woman, Aretha Vinson, who died of a brain disease. During the interview, Ms. Vinson discussed several causes for her daughter's death, and some of those mentioned as probable causes include the Creutzfeldt-Jakob disease (CJD) and the variant Creutzfeldt-Jakob Disease (vCJD), the latter of which is the human form of mad cow disease.

The following week, after the broadcast of the above-mentioned interview, the MFAFF made a request to the prosecutor's office to investigate criminal defamation. With respect to the alleged complaint filed before the KCC, the commission issued an order on July 16 to MBC, particularly to the producers of PD Notebook, to make a public apology for broadcasting the interview with Ms. Vinson.²¹

Starting from the attack on the producers of the PD Notebook programme, the new administration started several other actions in order to control the media. An individual working at the presidential election camp for instance, has been appointed as the CEO of YTN, one of South Korea's 24 hour news channels. Opposing his appointment, labour unions and several junior journalists protested in order for the new CEO not to come to the building of the YTN. Since this protest began, the CEO took action against the journalists who tried to prevent him from coming to the building. The CEO lodged complaints against 12 journalists, and dismissed 6 journalists, suspended 6 journalists, reduced 8 journalists' salary and gave warnings to 13 journalists. This case is currently filed at the court.

The dismissal of the CEO of KBS - one of the most reliable public broadcasters in the country - is another instance showing the government's growing attempts to control the media. He was pressurised to voluntarily resign since the new administration took office, even though his tenure was guaranteed in accordance with the law. Several government institutions were mobilised in order to make him resign.

According to the Broadcast Act (2000), the president can nominate KBS' CEO but there is no provision allowing him to dismiss the individual; rather, the tenure of office has been fixed for three years and cannot be terminated unless he is involved in corruption. Despite this, the Board of Audit and Inspection (BAI) has suddenly begun 'special' investigations into Mr. Jeong Yeon-ju, the CEO of KBS, on the basis of allegations of mismanagement. Despite internal criticism, a special KBS board meeting was held and six board members proposed the dismissal of Jeong to President Lee. On August 11, the dismissal orders were signed.

A complaint has been lodged by Jeong asking for a court to confirm the invalidity of his dismissal and to suspend its execution on August 11. The Broadcast Act only allows for the BAI to propose an officer's dismissal if he has been involved in serious crimes such as corruption, usurpation or personal misdeeds. It is therefore not clear whether mismanagement can be a reason for dismissal; whether the BAI can propose the dismissal of the CEO; or whether the president has the authority to dismiss him. It is now left to the judiciary to interpret the law and clarify the matter.²²

While the case of dismissal of Jeong is currently pending before the court, since the new CEO was inaugurated, several previous programmes relating to current affairs were changed in late October, but have received criticism from the public, for an increasingly blatant pro-government stance.

²¹ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

²² 2008 Ethics in Action → Vol. 2 No. 4 - August 2008: <http://www.eia.rghr.net/archive/2008-ethics-in-action/vol.-2-no.-4-august-2008/democracy-in-south-korea-mature-society-versus>



It is also alleged that the government is trying to privatise the MBC. The new administration has taken several actions in order to control media by mobilising other government institutions.

6.2 CONTROL OF THE INTERNET

While the candlelight vigil was going on, some major newspapers, such as Chosun, Dong-A and Joong-Ang, subscribed to the government's claims that alleged that there must be masterminds with sinister intentions behind the protests.

Many protesters believed that these newspapers distorted the truth, which is one major reason why the people held vigils and started rallying. They also noticed that these newspapers now strongly support the government's policy on beef imports and labelled the demonstrators as instigators controlled by masterminds, namely leftists. Before the new administration, however, these newspapers had severely criticised the then-government's agreement on beef imports and had written articles saying that US beef is not safe.

As a result, some individuals started online campaign and created a web site where they published a list of companies that had provided advertisements for these newspapers. They also asked others to phone the companies requesting them to withdraw or stop paying for advertisements in these newspapers.

Subsequently, the newspapers began writing articles in which they said that the campaign constituted an obstruction of their business and asked for an investigation. Accordingly, the prosecutor's office started an investigation, even though it had received no formal complaint from the companies. It has also been reported that government officials encouraged or attempted to persuade CEOs of the companies to register a complaint so that its investigation would have credibility.

Some 20 individuals have been banned from leaving South Korea while the investigation takes place. Such sanctions are usually imposed on people involved in corruption involving huge losses, foreign exchange fraud, or murder and other serious crimes. This investigation is believed to be a punitive action against individuals resulting from their campaigns against the newspapers.²³

Four absurd amendment laws aiming to control the internet have been submitted: the Amendment of the Act on Promotion of Information and Communications Network Utilization and Information

Protection, dealing with the expansion of real-name internet registration; the Amendment of the Criminal Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, creating a new criminal offence called 'cyber insult'; and the Amendment of the Protection of Communications Secrets Act that enables internet wiretapping.

²³ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>



6.2.1 REAL-NAME INTERNET REGISTRATION

Beginning in 2007, 37 internet portals were forced by the government to adopt the system of self-verification of one's identity when posting comments or articles on the internet. Under the law, if a person wishes to write an article or post a comment for these selected web sites, which are determined by their daily number of visitors that is set at 200,000 to 300,000 visits per day, they have to fill out a form with their name and national ID number, the so-called Resident Registration Number, or RRN. The RRN is assigned to a person when he or she is born through registration with the responsible government office. It is not possible to change this number once it is imposed. The number shows the date of birth, place of birth and gender of the individual.²⁴

After the beef agreement, internet users criticised the president and the government for failing to protect the people's right to health in the agreement. Their concerns, especially about mad cow disease, spread quickly. The government understood that the reason for its failure to stop the spread of what it claimed were "rumours" about mad cow disease was, in its view, weak controls over the verification of the identity of authors of comments and articles on the internet.

According to the current Act on Promotion of Information and Communications Network Utilization and Information Protection, the Korea Communications Commission (KCC) can take action and order a service provider of information and communications to delete an article for a month without a court order. If the service provider fails to follow the order, he or she has to pay a fine for negligence not exceeding more than thirty million (equivalent to US\$ 20'830).

The KCC has already prepared a bill to amend the Act on Promotion of Information and Communications Network Utilization and Information Protection, and is to submit it to the National Assembly. At the public hearing held on July 22, 2008, the KCC announced it was going to increase the number of web sites requiring the self-verification identity system to 178 from the current number of 37, by decreasing the number of daily visitors necessary to qualify for this system to 100,000 visitors per day. This will reportedly affect up to 75% of all internet users in the country. The Ministry of Justice, for its part, recommended that this system should expand to web sites whose numbers of visitor are more than 10,000 per day.

6.2.2 CREATION OF A NEW CRIMINAL OFFENCE CALLED THE 'CYBER INSULT'

Two amendments to Acts are proposed to control the internet through the creation of the 'Cyber Insult' offence. The Criminal Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, are to be modified in this way.²⁵

²⁴ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

²⁵ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1764/>



Criminal defamation already exists under the current Criminal Act. Article 307 (1) of the Criminal Act says, "a person who defames one's reputation by publically alleging a fact shall be punished by imprisonment with or without prison labour for not more than two years or a fine not exceeding five billion won." Article 307(2) of the same act also says, "a person who defames one's reputation by publicly alleging a falsity shall be punished by imprisonment for not more than five years with prison labour, suspension of qualifications for not more than ten years or by a fine not exceeding ten million won." It is prerequisite for a victim to lodge a complaint to the prosecutor for prosecution in such cases.

However, some of main content of the amendment Criminal Act proposed on October 30, 2008 by Mr. Chang Yoon-seok, a former public prosecutor and now a member of the Grand National Party, are: "anyone who defame one's reputation by publically alleging a fact by using any information and communications system for the purpose of slandering shall be punished by imprisonment with or without prison labour for not more than five years or a fine not exceeding twenty million won. A person... alleging a falsity....shall be punished by imprisonment with prison labour for not more than nine years or a fine not exceeding fifty million won."

According to the same amendment Act, it also creates an article stating that "anyone who publicly insults one by using any information and communications system shall be punished by imprisonment with or without prison labour for not more than three years or a fine not exceeding ten million won." In addition, these do not require any complaint, which means that police and/or prosecutor can investigate and prosecute at their own discretion.

Besides, amendment to the Act on Promotion of Information and Communications Network Utilization and Information Protection, was proposed on November 3, 2008, by Ms. Na Kyeong-won, a former judge and now a member of the Grand National Party. Some key additions in the amendment are: "Korea Communications Commission may order providers of Information Systems to deny dealing, suspend or restrict information that publicly insults a person." The amendment Act also creates provisions that anyone who publicly insults one by using information and communications networks shall be punished by imprisonment with or without prison labour for not more than two years or a fine not exceeding ten million won. These also do not require any complaint.

According to the current Act on Promotion of Information and Communications Network Utilization and Information Protection, article 70 (1) of the same Act says, "anyone who defames one's reputation by publicly alleging a fact by using information and communications networks for the purpose of slandering a person shall be punished by imprisonment with or without prison labour not more than three years or a fine not exceeding twenty million won." The article 70(2) of the same Act also says, "anyone who defames one's reputation by publicly alleging a falsity by using information and communications networks for the purpose of slandering a person shall be punished by imprisonment with prison labour for not more than seven years, suspension of qualifications for not more than ten years or a fine not exceeding fifty million won." Its article 70 (3) states that (1) and (2) of this article do need a victim's complaint



6.2.3 INTERNET WIRETAPPING

The Protection of Communications Secrets Act was enacted in 1993 and amended in 2005. It requires investigatory authorities such as police, prosecution and information investigatory agencies to get a warrant from court when investigating.

Even under the current Act, there are several flaws in relation to the right to privacy: the possibilities for wiretapping are too broad; it can be interpreted to read that all people are considered as potential criminals even though crimes do not take place; it allows excessive use of wiretapping for 36 hours without a warrant from court and a maximum 4 months of wiretapping with a court warrant, or up to 8 months if the matter is related to national security.

However, a new amendment to this Act was proposed on October 30, 2008 by Mr. Lee Han-seong, who has 20 years experience as a prosecutor and is now a member of the Grand National Party.

According to the amendment, all communications businessmen are required to install wiretapping facilities in order for investigatory institutions to be able to wiretap whenever necessary. If they do not prepare the facilities in a certain period of time, they may be repeatedly imposed a penalty surcharge of not more than ten hundred million won. Included as possible targets of wiretapping are: all details of telephone communications, including SMS and chatting, messenger and writings on non-public boards on the internet. All communications businessmen have to keep all log-records of communications for not more than one year and have to provide all details to investigatory agencies whenever they ask for them. If they fail to comply, they shall be punished by a fine for negligence not exceeding thirty million won.

Statistics released by the KCC in late September also show that the number of inquiries concerning the identity of internet users in 2008 increased by about 130% compared to the corresponding period in the previous year.

6.3. NATIONAL SECURITY ACT

Government institutions such as the Cyber Terror Response Centre, the national security bureau under the Korean National Police Agency, the National Intelligence Agency and the Prosecutor's Office are involved in a case under National Security Act (NSA).

After the country's democratisation in 1987, the power of these agencies compared to under the military regime had been diminished. However, several government investigatory agencies have been trying to strengthen their power and enlarge their agencies by way of proposing bills or amendments under the new administration.

This trend, in particular in the Korean context, gives rise to serious concerns. History has shown that these investigatory agencies, notably those concerned with "national security" had been controlled and mobilised by those in power in order to suppress opposition politicians, labourers, student activists etc. There are only few cases in which the accused in cases related to the NSA are found not guilty.



The case of Professor Oh Se-cheol, the leader of the Socialist Workers League of Korea, shows how prosecutors attempt to target people under this Act regardless of a lack of evidence. After an initial failure, the prosecutor attempted to get a second warrant from a court on November 18, 2008, but the court did not allow it. Professor Oh is the leader of the Socialist Workers League of Korea. The aim of this organization is to achieve a socialist workers' system peacefully (officially dissociating itself from the DPRK). However, during the candle light vigil, the prosecutor's office found the name of this organization on the list of those supporting the candle light vigil and criticizing the government's failure to respect right to health. The prosecutor's office clandestinely investigated this organization and asked for the court to arrest Prof. Oh and other major members under the NSA for forming an anti-government organization.

Mr. Lee Si-woo, photographer for peace, took photos showing the tragedy of the divided Korean peninsula and uploaded them on his website. He was arrested and charged under the NSA and Military Secret Protection Act on April 19, 2007. Finally, the Seoul District Court found him not guilty and freed him on January 31, 2008.

The case of Mr. Song Du-yul, a Korean-German professor is another example. The Supreme Court decided on April 17, 2008, to free him concerning charges of participation in an anti-government organisation under the NSA, based on the ground that he had visited North Korea.²⁶

However, there are several cases where people are charged under this Act. Particularly during and after the candle light vigil, prosecutors misused their powers under this Act. One of the improvements in this situation is that while the prosecutor's office has attempted to excessively make use of the NSA, the courts have begun interpreting it more strictly. However, the court has yet to change its position in the cases concerning members of the 'Hanchongryeon' students union,, which have been declared illegal activists, and the interpretation of 'enemy-benefiting activity' under the NSA. Earlier, the UN Human Rights Committee expressed in its jurisprudence that the South Korean government is found to be in violation of the ICCPR regarding this issue.²⁷

Ryu Min-seon, the 15th chairperson of 'Hanchongryeon' was sentenced to two and a half years of imprisonment with prison labour, which was suspended for four years, and she was also suspended from standing for election or participating in elections for two years on January 2, 2008.

Song Hyeon-a was convicted of having enemy-benefiting materials under the NSA and Act on Assembly and Demonstration on February 19, 2008.

There are also other cases where school teachers were targeted by the authorities under the NSA. Kim Hyung-gun took part in a commemoration for patriots of reunification with children in consultation with school authorities in 2006. However, after the new administration, he was arrested and prosecuted under the NSA.

Choi Bo-kyong uploaded articles relating to materials for teacher's instruction for students, but was charged under the NSA, as the writings were deemed to be enemy-benefiting materials on February 24, 2008.

A civil society organisation called 'Solidarity to implement South-North Korea's Joint Declaration' was established on October 21, 2000 after the then-South Korean President Kim Dae-jung met North Korean President Kim Jung-il and came to a declaration on June 15, 2000. It aims to play a role in the reunification

²⁶ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2828/>

²⁷ CCPR/C/84/D/1119/2002: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.84.D.1119.2002.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.84.D.1119.2002.En?OpenDocument)



through the civil sector. On September 27, the police raided the office of the organisation and each house of staff members and arrested six staff members and charged them under the NSA.

This organisation has reportedly been targeted because the policy towards North Korea has been changed under the new administration. It is expected that more civil organisations working in the field of reunification will be targeted under this Act in the coming years.

During the session of Universal Periodic Review (UPR) held on August 13, the government responded to recommendations raised by the Democratic People's Republic of Korea, the United Kingdom and United States of America emphasising that the National Security Act should not be misused or interpreted arbitrarily. As shown above, however, the police and prosecutors have already misused this Act.²⁸

7. COMMISSIONS FORMED TO ADDRESS THE STATE'S PAST VIOLATIONS

A Truth and Reconciliation Commission was formed, as an independent body, on December 22, 2005 for a term of four years. A total of 14 commissions have been formed since 1996, either by the country's then-President or Prime Minister, to investigate past violations. Victim's relatives are able to ask for reviews of cases by courts based on the investigation reports produced by these commissions.

For this year, the followings are some of the cases reported to be found not guilty after review.

Mr. Kang Hee-cheol, 48, travelled illegally in 1975 to Japan to visit his parents and stayed there for 7 years before being deported to South Korea. He was investigated for being a spy but was found innocent and released in 1981. . On April 23, 1986, two police officers illegally arrested him and took him to a anti-communist branch under the Jeju Police Station, where he was detained for 85 days. He was deprived of food and sleep for about a week, and was subjected to "water torture" to confess to being guilty of spying. Based on a fabricated by the police, he was convicted and sentenced to life imprisonment in 1987. He was given an amnesty in 1998. Even after his release, he was placed under surveillance by the police. Based on the findings by the Truth and Reconciliation Commission, his case was reviewed and he was found innocent on June 23, 2008, of the crimes for which he had been imprisoned.

Mr. Seo Chang-deok, 61, was abducted to North Korea in 1967 while he was fishing and returned to South Korea 124 days after his abduction. However, he was prosecuted under the National Security Act (which remains in force to date) and the Anti-Communism Act, which was abolished in 1980. The police fabricated a case based on which he was convicted in 1969. Based on a confession extracted under torture, he was convicted of being a spy and imprisoned for 10 years. He was released after seven years, but continued to be placed under surveillance for almost 20 years. He was again arrested and illegally detained for 33 days in 1984. His case was reviewed and he was finally found innocent on October 31, 2008.

On April 19, 1982, five persons commemorated those who were killed by military forces in Gwangju in May 1980. As a result of this, they were arrested for forming an "enemy-benefiting group," a "praising and/or inciting anti-government group" and reading books banned under the NSA. After the arrest, they were illegally detained and tortured into making confessions of guilt. The police fabricated a case charging them

²⁸ UN Doc. A/HRC/8/40: http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/KR/A_HRC_8_40_RoK_E.pdf



under the NSA, following which they were sentenced to between 1 and 7 years imprisonment with forced labour. They have since suffered from being labelled communist spies. This case was investigated by the Truth and Reconciliation Commission in 2007, as a result of which they were found innocent under a court review on November 25, 2008.

There are a number of other victims and their relatives who are seeking such redress from the courts with the assistance of these commissions, however, these commissions, in particular the commission looking into suspicious deaths in the military, are at risk of being abolished.²⁹

Mr. Shin Ji-ho, a Grand National Party-affiliated Member of Parliament, introduced a bill to amend the mandate of these commissions on November 20, 2008. According to the bill, the 13 commissions are to be abolished and the Truth and Reconciliation Commission is to take over the cases that the other commissions have not finished. Mr. Shin claims that it will enlarge the orbit of work of the Truth and Reconciliation Commission and avoid repetition of the mandates of those commissions as well as increase effectiveness of the work of government's institutions.

However, this move is being seen as an attempt to nullify the work and functions of each commission. The budget and lack of human resources have been criticized since the Truth and reconciliation Commission was established. If the commissions are to be abolished and the remaining cases are to be transferred to the Truth and Reconciliation Commission without appropriate human resources and budget for work, this will likely deprive victims or their relatives from knowing the truth.

8. CONSCIENTIOUS OBJECTORS AND MILITARY SERVICE

In South Korea, every man between the ages of 19 and 23 has the constitutional duty to serve in the military. After being conscripted, the primary areas for completing this duty are in the service of the army, navy or air force. There are also other forms of military service, such as the auxiliary police or through certain professional activities concerning particular fields of expertise, such as doctors.

Young men conscripted to serve in the army are randomly recruited to serve as members of the so-called battle police. Those who do not wish to complete their duty in the army can apply for service with the auxiliary police. There is no difference between them in terms of completing one's duty.

During the recent candlelight vigils, such young men from the battle police and the auxiliary police were deployed to protest areas and ordered to forcibly control protesters. They were armed with batons and shields and, as a result, were considered to be riot police, even though they did not have the training required to perform these duties. Each unit from a police station has its own commander, who is a professional police officer.

The job of these young men is meant to only involve assisting professional police officers, but, in reality, they were the ones sent as the first line of defence to confront protesters and were under orders to use force. These conscripted young men are not well-trained in the use of police equipment to disperse protesters in a peaceful manner. Instead, they are instructed how to prevent themselves from being

²⁹ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1769/>



photographed while forcibly dispersing people. Several videos taken by individuals, for instance, have shown a commander shouting at the young conscripts to hit protesters in the head with their shields. When a photographer tried to take a photo showing the manner in which the police arrested a protester, the commander ordered his men to block his view by holding up their shields to prevent them from being identified.

According to several researchers, these young conscripted men have suffered from sleep deprivation, poor quality rations and from long hours of heavy-duty labour. They have been obliged to follow orders from their commanders from the professional police force to assault unarmed, civilian demonstrators with batons and police shields. If they want to complete their national duty without facing detention and other problems, they have to follow these orders. Such young conscripts have, in fact, been the victims of this system for a long time.³⁰

If a young man refuses to follow the orders of his commander, he receives a departmental order, including an order of detention. This order does not come from the courts, but from a committee consisting of professional police officers. This period of detention is not included in the period of required military service. Therefore, the conscripted man has to serve extra time in his unit to make up for the days in detention.³¹



The case of Mr. Lee Gil-gun is a good example. Mr. Lee, who was performing his military service as an auxiliary policeman, refused to use violence against the protesters. He then held a sit-in for two days in protest and returned to his unit two days late. Following repeated order to engage the protestors that he refused, Mr. Lee was detained for 15 days for disobedience.³²

He was later prosecuted for disobedience and was sentenced to one and a half years imprisonment with prison labour under the Establishment of Riot Police Units Act by the Seoul North District Court (Chief Judge, Mr. Lee Sang-cheol) on November 14, 2008. He is currently being detained in Anyang prison and his case is pending an appeal.

The case of Mr. Lee is another example. Mr. Lee expressed his opinion on the internet about conducting military service with the police. He also requested to be allowed to serve in the army on June 12, 2008. As a result, he was detained for 15 days for neglect of duty and disobeying an order. He conducted a hunger strike and was hospitalised due to deteriorated health condition. After his release from hospital, he was again detained for 15 days, for being unable to perform his regular duties during his hospitalisation. To avoid further punitive action, on August 19, he was transferred to another police station to finish his service as recommended by National Human Rights Commission.

Violence against conscripts in military service is a serious and widespread problem. Most conscripted young men, even though they are ill-treated either in the police or in military service, have to suffer in silence so that they can finish their service and return to society. Those who commit a crime, including

³⁰ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1703/>

³¹ To see more, a fact-finding mission to South Korea with Forum-Asia: <http://material.ahrchk.net/docs/AHRC-SPR-006-2008-SouthKorea.pdf>

³² Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2966/>



attacking and even killing other recruits or superiors during the service, often claim to have been victimised during their service.³³

The UN Human Rights Committee has concluded that South Korea has violated the rights of the person under the ICCPR in the cases of two conscientious objectors.³⁴ Although a Research Committee on Alternative Service finished its research in 2006, and there had been a plan to institute a system of alternative service in the country starting in 2009, the Ministry of Defence announced in mid-2008 that a new research committee will be set up to evaluate the matter, which will serve to postpone the creation of such a system.

The lack of recognition of conscientious objection to military service and absence of an alternative service system has led to an estimated 3761 youth being imprisoned between 2002 and 2006. As a result, such persons often encounter difficulties in obtaining employment and social discrimination as the result of the stain this creates on their criminal records. As of September 30, 2008, it was estimated that there were 408 conscientious objectors in the country's prisons.

9. MIGRANT WORKERS

As reported in the AHRC's 2007 annual report, the number of migrant workers in South Korea is estimated to be over 420,000. It is estimated that some 224,000 out of this number are undocumented workers.

The situation of migrant workers has been deteriorating since the new administration has undertaken programmes to enforce a quota control and to arrest 100,000 illegal migrant workers. Immigration control officials are required to arrest overstaying workers to reach the quota, as a result of which all migrant workers, regardless of their legal status, have been targeted by immigration officials.

Officials frequently raid the premises where undocumented workers are likely to be staying, without court warrants, and allegedly assault them at the time of arrest. Several migrant workers have received injuries as a result. The following are some of the examples.

Immigration control officials entered a motel to check workers' identities at 3pm on January 15, 2008. For fear of being arrested, Ms. Kwon, 51, who holds the Chinese nationality, jumped from the 8th floor of the motel and died. The Hyehwa Police Station investigated this case for two days and closed it on January 17. The AHRC believes that the way in which the authorities carry out these raids leads to persons being so scared that they come to harm while attempting to escape. The authorities must take further precautions to ensure that such deaths and serious injuries are avoided where possible. Other examples below show a pattern concerning such cases.

While immigration control officials were checking the identity of migrant workers working at Maseok factory complex, Gyeonggi-do, at 8:30am on April 16, a Bangladesh national, jumped from the 3rd floor of a

³³ Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1703/>,

Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1769/>

³⁴ CCPR/C/88/D/1321-

1322/2004: <http://daccessdds.un.org/doc/UNDOC/DER/G07/402/00/PDF/G0740200.pdf?OpenElement>



building in order to avoid arrest and injured his arms and legs. Several others were also injured during arrest.

The case of Mr. Zhuo Hongquan, a Chinese national is another such example. At 8:50pm on August 26, about 27 officials raided a building and arrested 17 overstaying Chinese. As soon as they opened the door of a room on the 4th floor, Mr. Zhuo Hongquan was frightened and jumped out of the window. He suffered a cerebral haemorrhage and injured his face and skull as he hit the ground. A bone in his right arm was also severely fractured. After he received emergency surgery, the police deported ignoring a statement made by the doctor who conducted the surgery that he should not be moved.

The case of Burmese national Mr. Thar Sow Aye, 39, also shows medical negligence by immigration control officials. Officials raided a work place in Gyeonggi-do at 4:40pm on September 26 and arrested Mr. Thar Sow Aye. In the vehicle he claimed to be suffering from chest pain and was taken to hospital where he received basic treatment at 5:39pm. He was then taken to Incheon International Airport at around 8:30pm and repeatedly complained to officials about his chest pain but was ignored. He was checked again at a medical centre at the airport at 11:54pm as a result of which he was immediately taken to hospital. He arrived at 1:10am on September 27 and received a treatment but died at 4:41am.

Statistics released by Ministry of Justice state that the Immigration Control Office arrested 18,412 migrant workers and deported 14,368 from January 1 to July 31, 2008. This shows that officials wrongfully arrested 4,046 migrant workers and later released them because they were legally allowed to stay in the country.

There is no government institution where those who overstay can safely make complaints, even though they faces abuses, such as non-payment of their salary, assault, discrimination or sexual harassment - especially concerning woman migrant workers in the latter case. Under the new government, whenever relevant government officials receive a complaint from migrant workers, they now automatically inform immigration control officials. This means that such migrant workers no longer risk approaching these offices.

An amendment to the Immigration Control Act came into force in December 2007. There are several articles that de facto nullify basic criminal procedures and due process, notably by blocking court interventions in the process. The Act now allows officials to enter any premises without a warrant and detain over-stayers for up to six months in protection facilities. Their detention and extension of their detention does not require court order.

In order to decrease the number of undocumented migrant workers, a meeting was held at the Presidential Office and a plan for the improvement of the non-skilled foreign work force was created on September 25. According to the plan, the government will decrease the number of illegal workers from 19.3% to below 10%. It will form a comprehensive government unit to periodically carry out arrests, and will increase controls of those who join migrant trade unions.

After this plan was announced, large-scale arrests of migrant workers took place on November 12. Around 100 police officers and immigration officials raided the Masok industrial complex and arrested at least 100 migrant workers and took them into custody. It is reported that the authorities failed to present proper identification, inflicted verbal and physical abuse and used excessive force including handcuffs, unlawful breaking and entering into homes and factories, and racially-based targeting of migrant workers without checking their passports or visas at the time of arrest.³⁵

35 Forwarded Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1771/>



There is a union in South Korea called the Migrants' Trade Union (MTU) that advocates for the rights of migrant workers irrespective of their status. When the MTU tried to register in order to form a Trade Union with the Seoul District Labour Office, its application was denied on the basis that its staff contained undocumented workers. Such a denial is illegal under Korean Constitution, which guarantees the right to form a union regardless of status.

The MTU filed a case in 2006 and the Seoul High Court made its decision to permit the MTU to form on 1 February 2007 (Case No. Seoul High Court decision 2006 NU 6774). The appeal case is currently pending at the Supreme Court.³⁶

However, leaders of the MTU have been targeted since they became a complainant in a case for the establishment of the union. Mr. Torna Limbu, a Nepalese citizen, and Mr. Abdus Sabur, a Bangladeshi citizen (respectively the president and vice president of the MTU) were arrested and deported on May 15. The National Human Rights Commission had intervened in their forcible deportation but was ignored by Immigration Control Officials.³⁷ The MTU's previous leaders were also deported.³⁸ The first leader of the union was also targeted on 14 May, 2005, and later left the country.³⁹

The Korean Constitution states that, "any Korean has a right to form a union." The enjoyment of right to form a union in such cases as those mentioned above will depend on whether or not the Supreme Court narrowly interprets the constitution to only apply to persons with Korean nationality, or whether this right will be provided to all persons in Korea.

The government accepted the recommendations made by Canada concerning the need to ensure the protection of migrant workers, in particular women and children, during the Universal Periodic Review process in Geneva. However, it is reported that since the UPR took place, a pregnant migrant worker and children have been ill-treated by immigration control officials during arrest. Under the UPR process, Mexico also recommended ensuring access for migrants to services including access to the justice system, which the South Korean government has agreed to implement. However, as described above, migrant workers have been targeted by immigration officials due to the quota system and when migrant workers who had overstayed appealed to the National Human Rights Commission for assistance, they were deported.

10. THE LACK OF CRIMINALISATION OF THE ACT OF TORTURE

As a State Party to the Optional Protocol to the Convention Against Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the government of South Korea has the obligation to take measures to define and criminalize torture in its domestic law, in accordance with the CAT. The Committee Against Torture has also recommended that the government define torture in its domestic legislation. At

³⁶ Forwarded Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2931/>

³⁷ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2008/2860/> and Open Letter: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1410/>

³⁸ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2007/2701/> and <http://www.ahrchk.net/ua/mainfile.php/2007/2692/>

³⁹ Urgent Appeal: <http://www.ahrchk.net/ua/mainfile.php/2005/1102/>



the UPR session, in response to questions concerning this issue, South Korea's representative replied that domestic law is capable of punishing acts of torture.⁴⁰

However, the government has refused to criminalize torture under its Penal Code, claiming that there are many provisions in other legislation that prohibits torture. However, during a review of South Korea's implementation of the Convention Against Torture conducted by the Committee Against Torture in May 2006, in response to questions about the lack of a definition of torture in the country's criminal law, a member of the Korean delegation admitted that:

"...we did not fulfil the sufficient condition of this issue. So upon returning home we will make positive review on revision of Criminal Act in cooperating provisions on the definition of torture based on the article 1 of the Convention."

However, to date, nothing has been done in this regard and the government is therefore failing to respect a key obligation under the CAT. While cases of torture seldom occur in the country these days, cases of ill-treatment still take place.⁴¹ For examples we need look no further than the treatment of people taking part in the candlelight vigil and following arrest continue to raise concerns.

11. FAILURE TO IMPLEMENT VIEWS FROM INTERNATIONAL HUMAN RIGHTS INSTITUTIONS

The UN Human Rights Committee (HRC) has issued opinions concerning ten cases concerning human rights cases in South Korea. In seven cases out of ten, the government has been found to have violated the International Covenant on Civil and Political Rights (ICCPR), since 1994. These cases are: Sohn v. Republic of Korea⁴², Kim v. Republic of Korea⁴³, Park V. Republic of Korea⁴⁴, Kang v. Republic of Korea⁴⁵, Shin v. Republic of Korea⁴⁶, Lee v. Republic of Korea⁴⁷ and Yoon & Choi v. Republic of Korea.⁴⁸ The government has, so far, failed to provide remedies to the victims as suggested in the UN HRC's views.

40 UN Doc. A/HRC/8/40: http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/KR/A_HRC_8_40_RoK_E.pdf

41 Statement: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1658/>

42 CCPR/C/54/D/518/1992: <http://daccessdds.un.org/doc/UNDOC/DER/G95/181/56/IMG/G9518156.pdf?OpenElement>

43 CCPR/C/64/D/574/1994: <http://daccessdds.un.org/doc/UNDOC/DER/G99/400/65/PDF/G9940065.pdf?OpenElement>

44 CCPR/C/64/D/628/1995: <http://daccessdds.un.org/doc/UNDOC/DER/G98/194/37/PDF/G9819437.pdf?OpenElement>

45 CCPR/C/78/D/878/1999: <http://daccessdds.un.org/doc/UNDOC/DER/G03/432/13/PDF/G0343213.pdf?OpenElement>

46 CCPR/C/80/D/926/2000:

<http://www.unhchr.ch/tbs/doc.nsf/0/963903e05b5730b4c1256ed100485df9?OpenDocument>

47 CCPR/C/84/D/1119/2002: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.84.D.1119.2002.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.84.D.1119.2002.En?OpenDocument)

48 CCPR/C/88/D/1321-

1322/2004: <http://daccessdds.un.org/doc/UNDOC/DER/G07/402/00/PDF/G0740200.pdf?OpenElement>



12. RECOMMENDATIONS

The Asian Human Rights Commission (AHRC) urges the government of the South Korea to:

1. Establish a system to enable oversight, as provided for under Article 60 (1) of the Constitution, concerning the signing of all agreements, including trade agreements. The respect for South Korea's human rights obligations must be guaranteed under all such agreements as a pre-condition;
2. Amend all flaws in the Act on Assembly and Demonstration, in particular, the license system and the prohibition on assemblies after sunset, to ensure that it is in accordance with international norms and standards;
3. Recognise the work of human rights defenders and take necessary steps to ensure that they are able to carry out their activities without hindrance;
4. Reinstate all of YTN's dismissed journalists and stop all attempts to the control media and the internet, including the through Real-Name Internet Registration, the creation of 'cyber insults' and internet wiretapping, that clearly restrict and violate the freedoms of opinion, expression and information;
5. Abolish criminal defamation;
6. Abolish the National Security Act instead of repeatedly saying that the Act should not be misused;
7. Define and criminalize the act of torture under the Criminal Code, in accordance with the UN Convention Against Torture and ensure those involved in torture or ill-treatment are punished as the result of fair trials and in line with international standards;
8. Guarantee the activities of commissions relating to past violations of human rights by the State;
9. Establish an alternative military service system, so that conscientious objectors are no longer criminalized;
10. Recognise the Migrants' Trade Union and ensure that arrests, detention and deportation of migrant workers are only conducted on order of courts;
11. Establish a domestic system to implement the views of international human rights institutions.