

# SOUTH KOREA

## GOVERNMENT SACRIFICING HUMAN RIGHTS AND THE LAW IN FAVOUR OF ORDER

This report concerns the evolving situation of human rights in the Republic of Korea (South Korea) in 2009. The situation of human rights in the country, while still significantly better than most if not all other countries in Asia, is becoming an increasing source of concern as it has seen deterioration in several instances since the current government came into power in 2008. There have been increasing limitations on key freedoms, such as the freedoms of the press, of expression and of assembly. The Asian Human Rights Commission (AHRC) has witnessed increasingly repressive measures against peaceful demonstrators, attacks on the independence of the judiciary, attacks on human rights defenders and actions taken by the government to restrict and undermine the functioning of the country's National Human Rights Commission. This report does not purport to be comprehensive, but instead highlights the events, cases and concerns that the AHRC has encountered during 2009.

After the inauguration of Mr. Lee Myung-bak in February 2008, the government 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 South 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, typically by persons holding candles, asking for a renegotiation to secure people's health and strengthen the national quarantine system. A coalition of about 1,700 organisations nationwide was formed on May 6, 2008 and tens of thousands of people protested for about 100 days asking for such a renegotiation. However, the police on instruction from the government but not in compliance with the law took disproportionately forceful actions against the demonstrating civilians, including by arresting numerous protesters on the spot. The police took photos during the protest to identify the protesters and later arrested them under the Road Traffic Act and Act on Assembly and Demonstration.

During the presidential elections, Mr. Lee said he would implement business-friendly policies. These policies ostensibly designed to boost the country's economy include large

construction and development works, such as area redevelopment plans and the revival of four rivers plan in 2008. Along with cracking down on the afore-mentioned anti US beef demonstrations, the government has also taken tough measures to crack down on demonstrators opposing redevelopment projects that are being conducted without due consideration to the rights of affected persons. Clashes between protestors and government forces resulted in six deaths in Youngsan in January 2009.

Under the new administration, the deterioration of rights began with restrictions to the freedom of expression with an attempt to control the media by appointing a figure who supported the new administration and the misuse of the Act on Assembly and Demonstration to restrict people's freedom of assembly.

Union leaders have had cases filed against them and are also targeted by enterprises. The government has excluded civil society and human rights organisations that have been critical of the government's "business-friendly" policies from the list of those receiving support from the State, while providing budget allocations to those that supported the government, even though in several cases the organisations in question had not been in existence for the period required under regulations in order to qualify for such support. The government has also taken action to nullify the institutional human rights watch dog, the National Human Rights Commission of Korea.

These actions by the current administration and President are having a worrying negative effect on the rule of law and predictability of institutions, and are undermining a wide range of crucial freedoms and fundamental rights. Institutions that are mandated to uphold the rule of law, in particular the law enforcement agencies, are increasingly ignoring the law and acting to undermine rights, with impunity.

Furthermore, in producing media-related bills, the ruling Grand National Party ignored the procedures of the National Assembly and forced the bills through using its majority, without allowing for discussions of the bills' content. When the opposition party brought this case to the Constitutional Court, the Constitutional Court found that the procedures followed were illegal, but the acts in question remain in effect. As the decision drew attention from the public, the relevant authorities from the Constitutional Court, under pressure, stated that the court did not rule that they were unconstitutional, leaving the National Assembly to address the flaws in its procedures. The judiciary and National Assembly have so far failed to address the above problems and as a result the level of arbitrary use of law by the prosecutor and police has increased.

Under the current government, the independence of the judiciary has come under pressure, threatening the rule of law in the country. As the country has stood as an example of rule of law and development of human rights, such attacks undermine efforts throughout the region to establish the primacy of human rights.

In its response to the Universal Periodic Review held in August 2008, the South Korean government accepted the recommendations concerning the freedom of assembly raised by Algeria and the need for investigations into all allegations of torture and ill-treatment by law enforcement officers raised by Canada. The Act on Assembly and Demonstration allows a single individual to hold a solo protest without permission from the police station, however, the police are now arresting even lone individuals holding protests, according to reports. With regards to ill treatment by law enforcement officers, those who were beaten during the candlelit vigils in 2008 have not been investigated or punished.

As will be shown in greater detail further on in this report, the case concerning the deaths of protestors in Youngsan and workers of the Ssangyong Motor Company have never been investigated. In addition, the criminalisation of conscientious objectors due to a lack of alternative ways of fulfilling national service remains a problem. During the review, the government stated that alternative service programmes were being studied. Before the review, the then-government announced that an alternative service system was to be adopted starting in 2009. However, after the new government came to power, it has not taken any action in this regard. In July 2008, the ministry of defence announced that such a programme would only be implemented depending on public opinion and then appointed a research team which later reported on the alleged negative effect that the implementation of an alternative service system would have, leading the government to shelve any plans to establish alternative service, which the AHRC deeply regrets.

### **Government undermining the independence of the judiciary**

Over 1,700 organisations that joined the candlelit vigil in May 2008 were targeted by the police and some 1'500 of their members were arrested for allegedly illegal assembly and demonstration under the Act on Assembly and Demonstration and the Road Traffic Act. In one such a case, human rights activist Mr. Ahn Jin-geol, asked for the Constitutional Court to review Article 10 of the Act on Assembly and Demonstration, which prohibits holding assemblies after sunset. The judge, Mr. Park Jae-young who was hearing Mr Ahn's case, accepted his application and asked for a constitutional review. The judge later resigned, saying that it would be difficult for him to perform as a judge under the current administration.

It was later revealed that when cases relating to the candlelit vigil were brought to the court, they were allocated to a particular bench court not per the usual the computerised case allocation system. This intervention is deemed to be a clear attempt to ensure that such persons are directed to a court that is likely to find the persons guilty. Thirteen out of sixteen criminal judges in the Seoul Central District Court challenged the changes and later the case allotment system was returned to normal. The computerise case allotment

system was established in order to prevent any influence by senior judges or politicians, as had been seen under the country's military dictatorship when sensitive cases were allocated to a particular judge in order to ensure favourable outcomes for the government.

Mr. Shin Young-Cheol, the above court's chief judge, then asked criminal judges handling cases related to the candlelight vigils to increase sentences, including replacing fines with detention orders. The police can detain persons for ten days and can extend this once, with the initial detention and extension requiring warrants, which judges were urged to facilitate.

The chief-judge influenced judges dealing with such cases including by sending them several emails, in which he urged them to obstruct the releasing of candlelit vigil protesters on bail" and not to "bother about the result of constitutional court" which was at the time reviewing articles of the Act on Assembly and Demonstration. He became a justice at the Supreme Court in February 2009.

This case was delivered for investigation to the Ethics Committee of the Supreme Court, which found the behaviour of the then chief-judge was not appropriate, which resulted in a warning to the chief-judge by the Chief Justice, but no further action. The AHRC deplors that the chief-judge got away with a slap on the wrists for these serious offences and remains on the Supreme Court to date and calls on the judiciary to take appropriate action against the then-chief judge through its disciplinary committee, ensuring that such offences cannot re-occur and that those committed are effectively punished.

Several attempts were made for him to voluntarily resign and later an impeachment against him was submitted to the National Assembly in November 2009, but it went nowhere due to the ruling party's refusal to act on the call for impeachment within the prescribed 48 hour period, leading to it being dismissed.

### **Arbitrary use of law by the police and prosecution**

Reports by local and international NGOs reveal that the police assaulted, hit and attacked many demonstrators during the candlelit vigil in May 2008, but that no one has been held accountable for this unnecessary and excessive use of force. In fact, such force was encouraged by repeated remarks from high-ranking officials, including the President, the Prime Minister, the Police Commander and the Minister of Justice calling for order to be ensured. Due to these public speeches, police now arbitrarily arrest and detain anyone they wish that are taking part in demonstrations on the pretence of ensuring order. This has continued to date and shows how the degradation of the protection of rights that began during the 2008 crack-down on protests continues into 2009.

In labour union-led protests or strikes, police action is typically even more heavy-handed, involving greater use of force and arbitrary arrests. The case of Ssang Yong Motor Company is indicative of this. The company fired around three thousands workers in May 2009 after negotiations between the employer and unions failed to find another solution. Subsequently, in July, the workers and members of the labour union occupied the work place for 77 days in Pyeongtaek-si, Gyeonggi province, to protest against the dismissals. The company prevented basic necessities such as food, water and medicine for a patient with diabetes were not allowed to enter the premises under occupation. Rights activists and voluntary medical personnel were also prevented from entering and even arrested by the police and detained for some 40 hours for “illegal assembly and demonstration.” Two workers who agreed to voluntarily retire committed suicide. The wife of a labour union leader committed suicide after facing threats and legal action from the company. Meanwhile, the company allegedly instigated other workers who were not dismissed to mobilise to fight against those staging the occupation and oust them from the work-place.

The police used helicopters to indiscriminately disperse a particularly toxic type of pepper spray that has reportedly since been shown to have a risk of causing cancer. Tests performed by a group of doctors on the substance, dichloromethane, of which some 2042 litres were reportedly sprayed on the protesting workers, show that is capable of causing cancer. It is classified as a second degree substance on a scale of carcinogens by the International Agency for Research on Cancer (IARC) under the UN’s WHO. The skin of those who were sprayed with pepper spray reportedly peeled of and blistered.

The workers also suffer from a lack of water. At a time when the number of protesting workers had reduced from some 1500 to around 500, the police launched an attack, and used taser guns in attempting to disperse the workers. A worker was reportedly shot in the face with a taser gun and left for three hours without proper medical treatment. Many workers suffered from bruises and fractured bones. Like other cases, the police allegedly invited so called ‘security guards’ hired by the company to take part in the dispersal and even allowed them to use violence against the workers with their consent and acquiescence. During the crackdown, the police also beat, hit and attacked workers with their shields and batons.

However, physical attacks by State actors are only the beginning of the crack-down against demonstrators, as many legal actions have also been launched against them. Around 1,500 people have been prosecuted or are currently in court proceedings for participating in the candlelit vigil in May 2008. On September 24, 2009, the Constitutional Court decided that two articles of the Act on Assembly and Demonstration were unconstitutional. They are Article 10 of the Act prohibiting assembly and demonstrations before sunrise and after sunset, and Article 21(2) describing punishment for a person who violates Article

10. In its judgment the Constitutional Court left the responsibility to the legislature for the amendment of those provisions of the Act with a note that if no amendment is made by June 30, 2010, the articles found unconstitutional shall lose their effect from July 1, 2010.

However, on following day, the prosecutors' office emphasised the point that the Constitutional Court temporarily allows the application of those provisions until such time as the amendment of those provisions is made and further concluded that those who violate the current provisions of the Act were to be punished, despite these provisions and the punishment ascribed having been shown to be unconstitutional.

According to the article 47(2) of the Constitutional Court, "Any law or provisions thereof decided as being unconstitutional shall lose its effect from the day on which the decision is made." Any penalties provided under such unconstitutional laws or provisions should also lose effect. However, the prosecutor's office has been acting against this article. Based on the judgement in question, the prosecutor's office must halt any proceedings against those accused of allegedly violating Article 10 of the Act on Assembly and Demonstration and release them. It is also worth noting that the court should find those accused innocent and that they should therefore be released.

In addition, the article 47(3) of the constitutional court also stipulates, "In cases referred to in the proviso of paragraph (2), re-adjudication may be requested with respect to a conviction based on the law or provisions thereof decided as unconstitutional." If those prosecutors continue to proceed in the cases until those provisions of the Act are amended, and the court finds the accused guilty based on the provisions found unconstitutional, those convicted can also bring their cases for re-adjudication.

Seven staff members of the YMCA, including Mr. Lee Hack-young, the national general secretary, were beaten by the police on June 29, 2008 and they brought this case to court, which ruled on October 21, 2009 that the government has to pay compensation for damages worth around 10,000,000 Korean Won (around 10,000 USD) to the seven persons. Even though they won this case in civil court, they lost the criminal case, as they were unable to identify the policemen responsible as they had concealed their identities (names or number on their uniforms).

### **Absence of protection for those who are affected by re-development projects**

Under President Mr. Lee Myung-bak's redevelopment policies designed to bolster the South Korean economy, around 300 areas were designated for redevelopment in so-called

'New Towns'. This policy replicates infrastructure and construction development projects launched in the 1970s that significantly boosted the country's economy at that time. Such policies in the past led to large scale forced evictions and related human rights violations. The current administration is again taking the country down a path in which economic considerations are far outweighing the human rights problems that they engender.

Once an area has been designated for redevelopment, the city hires companies to redevelop the area, who in turn hire demolition firms. These demolition companies hire thugs to evacuate residents who do not want to leave, often through intimidation and force, and with the acquiescence of the police.

On January 19, 2009, about 30 people affected by forced evictions occupied the rooftop of a four-story empty building in Youngsan 4-ga, in Seoul, where they held a protest, calling on the authorities to provide them with temporary homes and livelihoods. They built a temporary watchtower on the roof, from which they conducted the protests.

In response, and without any attempt to negotiate with them, some 1,400 police were deployed there at 4 a.m. on January 20, 2009, including a 100-member police special unit.

The protestors threw Molotov cocktails at the large police force, which responded by spraying the watchtower with water cannon. A police unit inside a container hanging from a crane was then used to launch an attack on the watchtower. During this attack, flammable substances in the watchtower ignited and the ensuing fire killed six persons, including one police officer, and injured about 20 people. The deaths and injuries are regrettable and the AHRC believes that these could have been prevented, notably if the police had not launched the heavy-handed attack on the protesters. The AHRC understands that the police were aware that there were flammable substances in the watchtower and went ahead with the attack despite knowing the risks involved. Furthermore, despite the risks, no fire or medical services were deployed.

Immediately following the incident, the police blocked access to the building and surrounding areas and did not allow family members of the protesters or the media to approach the scene. They reportedly transported the dead bodies to an ambulance while blocking them from sight with their riot shields in order to ensure that they were not recognised. Autopsies were conducted without obtaining the consent of the families of the victims or allowing family members to be present. The family members were not even allowed to see the bodies after the autopsies had been conducted.

The prosecutor's office vowed to thoroughly investigate the case and punish those involved. As the first step of the investigation, the police arrested and interrogated 27

protesters who were on site at the time of the fire. Based on the police's report, the investigation division at the Seoul Central District Prosecutors' Office then indicted 24 of the arrested protesters. They reportedly did so without investigating crucial facts, including how and where the fire started, and why the autopsies were conducted in such a hurry without the consent or presence of family members. The indictments included for: special obstruction of public duty under the Criminal Act, obstruction of business (of construction companies), and infiltration in a building used as a residence. Special obstruction of public duty is stipulated under Article 144(1) of the Criminal Act which reads that "a person who, through the threat of collective force or by carrying a dangerous weapon, commits the crimes specified in Article 136 (Obstruction of performance of official duties), 138 (Contempt of Court or the National Assembly)...shall be punished by increasing by one half the punishments specified in the relevant Articles." Article 144(2) stipulates that "any person who commits a crime as stipulated in paragraph (1) and injures a public official, shall be punished by imprisonment for a definite term of three or more years. If this results in the death a public official, this shall be punished by imprisonment for life or a definite term of five or more years." In this case, the court applied Article 144(2).

After the indictment, the defence lawyer applied for civil participation in the trial (a South Korean system of jury participation in which with final decision is taken by a judge), but this was denied. When submitting the investigation reports concerning the case to the court, the prosecution omitted one third of the documents, amounting to 3000 pages. When the defence lawyer brought this to the court's attention, the court ordered the prosecutor to allow the defence access to all investigation records on April 14, in accordance with article 266 (4) of the Criminal Procedure Act. On April 16, the prosecutor notified the defence lawyer of his refusal to allow him such access. In response, the defence lawyer asked the court to issue a warrant to seize the reports, provided for under article 106 of the Criminal Procedure Act, which the court refused, saying that only the prosecutor can ask for a warrant from the court. The court also took no action against the prosecutor's office concerning its failure to respect the court's orders. Finally, the defence lawyer filed an application to have the judge changed, which was dismissed. The above clearly violates internationally accepted standards for fair trials.

The case was reopened on August 20, 2009, and during the trial, the defence lawyers again asked for access to the investigation report. However, the court prohibited them from raising the matter again. When the defence lawyer argued that they could no longer provide legal advice without access to the report, the court asked them to leave the court room. The defence's request for the intervention of the court with regard to the report was again rejected. The case was finally postponed on September 1 and the defence lawyer resigned, on the basis that this was an unjust trial. On September 1, the accused asked for the court to delay the court proceedings since there were no longer defence

lawyers, the court refused this saying that they would be assigned counsel.<sup>1</sup>

Since January, family members, members of rights groups, religious groups and individuals have been holding prayer meetings and religious ceremonies such as Catholic Mass in which they have also called for the government to resolve this case.

Such groups have also submitted an application for a permit to demonstrate in accordance with the Act on Assembly and Demonstration, but the police have not allowed them to proceed. A group of supporters performed a type of march associated with Buddhism used in South Korea, in which participants march and bow each fourth step (which has been authorised as a citizen's legitimate means of expression by the Supreme Court but the police accused the people of illegal assembly and demonstration and arrested 19 people on August 29, 2009. They also arrest 16 persons on August 31, 2009, including one family member whose husband died during the fire and whose son is one of the accused facing trial.

During the cross-examination in court, several witnesses reportedly changed their testimony as compared with that presented by the prosecution in making their case, but the judge ignored the changes and found all accused guilty as charged on October 28. The defence lawyer appealed the case, which was before the High Court (Appellate Court) as of the end of 2009. The corpses of those killed in the fire remained in the possession of the hospital at that time.

### **Restrictions on media freedoms and the use of defamation by the government**

After the candlelit vigil in 2008, the government ramped up its control of the media and free speech on the internet. Firstly, President Lee appointed a close supporter as CEO of the Korean Communications Commission (KCC) on March 26, 2008. Following this, Mr. Jeong Yeong-ju, the CEO of the Korea Broadcasting System (KBS), was dismissed by the KBS's board members. Mr. Jeong had been pressured into voluntarily resigning since the new administration took office, even though his tenure was guaranteed under the law. Several government institutions such as the police, prosecutors and the Board of Audit and Inspection (BAI) participated in efforts to make him resign. Mr. Jeong filed a case in court on August 11, 2008 and the court found him not guilty on breach of trust on business on August 2009 and his illegal dismissal in November 2009. Currently, these two cases have been appealed and remain pending against him in the Seoul High Court's appellate court.

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<sup>1</sup> For the complete details concerning this case, please see the following: <http://www.abrchk.net/statements/mainfile.php/2009statements/2097/> and <http://www.abrchk.net/statements/mainfile.php/2009statements/2216/>

Mr. Ro Jong-myeon, a union leader from the YTN--24 hour News Channel, who protested against the appointment of a new KCC CEO by President Lee Myung-bak, was dismissed along with five other union members on October 6, 2008. Thirty three members of the union received disciplinary punishment at that time. The workers went on strike leading to the union leader being arrested for obstruction of business on March 24, 2009. He was released on April 2. Then, six employees, including Mr. Ro, were dismissed. The Seoul Central District Court ruled that their dismissals were illegal on November 13. However, the company prohibited them from entering its premises by hiring security guards on November 16.

Mr. Park Dae-sung - a blogger also known as 'Minerva' - was arrested on January 6, 2009 and detained until April 20, 2009, for publishing articles on the internet, notably concerning gloomy predictions about the future of the Korean economy. The prosecutor had him arrested for "distributing false information on the internet," accusing him of "impeding public interest" under article 49(1) of Framework Act on Telecommunications as the result of two of his articles. The Seoul District Court released him on April 20, 2009, having found him not guilty, but the prosecutor appealed this decision on April 24. The case remained pending before the High Court's Appellate Court at the end of 2009. The arrest of this well-known blogger has had a particularly negative effect of the freedom of expression. As a result, many bloggers have stopped publishing on the internet and have deleted all their previous content out of fear of arrest and prosecution.

In July 2008, the Ministry of National Defence labelled 23 books as being seditious. Some of them had previously been awarded prizes, including "Book of the Year." The 23 books include titles such as: "Why is 80 controlled by 20?", "One spoon in the earth", "Bad Samaritans", "History of Korea", "Salt flower tree", "Guerillas of Samsung Kingdom", "Tale of our history", "Our Jesus", "US military crimes and Korean-USA SOFA (status of forces agreement)", "Missile strategy of North Korea", "Nuclear and Korean Peninsula", "21 Century's Philosophy", "What uncle Sam really wants (by Noam Chomsky)", "Reunification, the last blue ocean of our nation", "Korean style of culture in North Korea", and "Die Globalisierungsfalle". Noam Chomsky's 'Year 501' was also included.

In October, seven military judicial advocates submitted a constitutional complaint alleging the selection of books violated the right to pursue happiness (under article 10 of the Constitution). Two out of the seven later withdrew their complaint. On March 18, 2009, two were dismissed on the grounds that they were damaging army dignity, disobeying orders and being defamatory. Three others were disciplined but not dismissed.

Despite recommendations by the UN Human Rights Committee for the government to repeal or abolish the National Security Act, this is being used with increasing frequency. Mr. Choi Bo-kyung, a history teacher at Gandhi Alternative Elementary School, was

arrested and prosecuted under article 7 (1) (5) of the National Security Act in August 2008. This Article states that, "Any person who praises, incites or propagates the activities of an antigovernment organisation, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years." Due to the absence of witnesses for the prosecution, the case has been pending since then.

Mr. Park Won-soon, a human rights lawyer and civil activist alleged illegal activities by the National Intelligence Service (NIS) in an interview with a weekly magazine on June 10, 2009, and based on this, the NIS sued him on September 14 for civil defamation requesting a huge amount of money (Korean Won 200 million, or around US\$ 170,000) in damages. This is first ever defamation suit against a civilian by the NIS and is a worrying precedent.

The use of DPI (Deep Packet Inspection) activities by the intelligence agencies have been revealed during a court case in which persons working for Korean reunification have been subjected to such surveillance over a period of six years. DPI entails the use of network equipment to intercept and modify, examine, restrict, or copy the content of data communications. According to article 6 (7) of the Protection of Communication Secrets Act, the period of communication restriction measures and such surveillance activities cannot exceed two months and will immediately finish when the purpose of such measures is achieved. If there is sufficient reason to justify an extension in order to deal with a crime, the period may be extended for a further period of two months. There is, however, no limitation to the number of extensions that can be granted - in one case, the National Intelligence Service received approval from a court to use DPI 14 times in the same case. However, the authorities have abused their powers by gathering and conducting surveillance on tens of thousands of phone numbers and e-mail accounts and internet traffic without sufficient justification or respecting the provisions of privacy regulations, according to reports.

As part of the National Assembly's oversight of the government's agencies, it was revealed that 31 DPI facilities had been used and there were around 100 cases in which internet service providers provided DPI information to the investigation agencies in 2008.

Several bills that will likely further undermine the freedom of expression have been introduced without adequate public discourse. They include measures to expand the number of internet portal websites that have to adopt a 'self-verification identity system' that registers the identity of users; the creation of a new form of an illegal act, known as a cyber insult, concerning which legislation was introduced by a member of parliament,

who is a former judge; as well as the amendment of the Protection of Communications Secrets Act, which allows the government to conduct wiretapping whenever they deem it necessary. A defence lawyer acting concerning the case of the 14 consecutive DPI measures cited above has requested a constitutional review of this amendment, which was accepted by a court and sent to the Constitutional Court on November 27, 2009.

Mr. Lee Choon-keun, the producer of the Munhwa Broadcasting Corporation's 'PD Notebook' programme aired by the Munhwa Broadcasting Corporation (MBC) was arrested on March 25, 2009, before being released 48 hours later. Another producer, Ms. Kim Bo-seul from the same media corporation was arrested on April 15 and released after being held for some 47 hours. Both had broadcasted information concerning the safety of importing beef from the United States of America and focused on the government's inspection system in 2008. Five journalists - Mr. Cho Neung-Hee, Mr. Song Il-Jun, Ms. Kim Bo-Seul, Mr. Lee Choon-Keun and Ms. Kim Eun-Hee – were sued charged with criminal defamation by the former Minister for Food, Agriculture, Forestry and Fisheries, Mr. Chung Un-cheon, after he had retired from office. A prosecutor in charge of initial investigations in this case resigned in protest at the unjust nature of the prosecution. However, the case continued and a trial began on September 9, 2009. Thereafter, Mr. Um Ki-Young, the CEO of MBC was also reportedly put under pressure to resign by Mr. Kim U-Ryong, the chairperson of the Foundation for Broadcast Culture. This Foundation connected to MBC receives a large percentage of MBC government funding. The government is therefore exerting pressure indirectly, if evidently, in this way. In addition, producers of 'PD Notebook' have been replaced and some programmes that have been critical of government policy have been halted.

### **Continuing attacks on activists and human rights defenders**

During the candlelit vigil in May 2008, rights groups organized peaceful protests and issued several statements jointly with other civil society groups. Since the number of protests dramatically increased, the government ordered the police not to permit protests, but this did not stop the demonstrations from going ahead. Since then the government has been targeting activists, rights groups and human rights defenders. The protests were essentially motivated by South Korean citizens' concerns over their right to health.

In February 2009, the police reportedly selected around 1,800 non-government organizations that joined in a coalition that joined the last May candlelight vigil and labelled them as being 'illegal and violent organisations.' Based on this, the Ministry of Public Administration and Security has suspended funding and withdrawn cooperation projects with these organisations, which has in several cases had a significant impact on their ability to carry out their activities in favour of human rights and social aid. In

addition, the country's national intelligence service has allegedly pressurised companies to also stop funding these organisations, further compounding the problem. The defence security command – part of the military intelligence services - engaged in the illegal surveillance of activists, and the security services monitored, wiretapped and conducted surveillance of human rights activists, notably those working to protect the rights of those being forcibly evicted as part of redevelopment projects, through communications systems including the internet. It is illegal for the military to conduct surveillance activities targeting civilians in South Korea. Such activities have in particular allegedly targeted persons working towards the reunification of the Korean peninsula, according to reports.

### **Government undermining the National Human Rights Commission**

The government has taken steps to seriously undermine the independence and functioning of the National Human Rights Commission of Korea (NHRCK), as well as its legal status. Of note is the fact that the government attempted to place the NHRCK under the direct control of the country's President in early 2008, attempting to justify this move as being conducted to increase the body's efficiency. When this proposal was announced, many human rights groups, scholars and civil society groups criticised the plan and asked for it to be abandoned. Human rights activists held a protest. The chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and two successive United Nations High Commissioner for Human Rights - Ms. Louise Arbour and Ms. Navi Pillay - sent letters to the government concerning the independence of NHRCK. Coinciding with the latter's letter on February 25, 2008, 248 legal scholars also wrote a joint statement calling on the government to withdraw the Ministry of Public Administration and Security's plan to restructure the NHRCK. Ultimately, the plan was withdrawn, but attacks on the NHRCK's independence have continued through other means.

The NHRCK has had to face increased scrutiny by the government. The Board of Audit and Inspection launched a rigorous audit of the NHRCK's activities and budget, which is believed to have been done for political reasons in order to put the body under pressure. The government reportedly fielded a large team of auditors over a long period of time during the nationwide candle-light demonstrations concerning the US beef imports. The timing is suspicious and it is believed that the audit coincided with the demonstrations on purpose in order to prevent the NHRCK from being able to effectively monitor any violations of human rights during the police's crack-down on the demonstrations. The audit report stated that the NHRCK needed to be restructured in line with the restructuring of several government institutions that were ongoing at the time. In

response to this report, the NHRCK prepared a plan to restructure in accordance with the audit report, but the Ministry of Public Administration and Security then informed the NHRCK of the need for it to downsize its staff by 30 percent in early 2009, despite the fact that the audit report did not mention such a reduction. The government argued that several ministries were also downsizing as part of the President's policy of reducing the size of the government. However, these government institutions were only going to downsize by 2 or 3 percent. The current administration has shown its disdain for the NHRC since it took power, including by ignoring several policy recommendations made by the body.

Despite criticisms, the NHRCK was restructured and 44 out of 208 staff members were removed – representing a downsizing of some 21 percent. In April 2007, prior to the current administration taking power, the same Ministry and the NHRC had agreed to increase the body's staff by 20 members in preparation for the implementation of the Act on Anti-discrimination against persons with disabilities. In addition to downsizing the number of staff, the government has sought the closure of three of the NHRCK's regional offices but this had not been carried out by the end of 2009. Such a plan would mean that the NHRCK would no longer have a presence in three of South Korea's provinces and would therefore not be able to work effectively or be as accessible to victims of human rights abuses in those provinces.

Due to the series of attacks on the independence of the NHRCK by the new administration and, the chairperson of the NHRCK, Mr. Ahn Kyong-Whan, who was also the vice chair of the ICC, resigned on June 30, 2009. Following this, the President nominated Mr. Hyun Byung-chul as the chairperson on July 16 and appointed him on July 17 without public discussion, publicity or input.

When being interviewed on July 17 by a local newspaper, Mr. Hyun said he did not know about human rights, but that he would learn by doing. He apparently has no experience in the field of human rights, although he worked as a university law professor, specialised in the country's Civil Act. This new appointment is directly contrary to not only section 2 of the principles on composition and guarantees of pluralism (7 out of 11 commissioners including the chairperson of the NHRCK are lawyers or legal scholars) but also article 5 (3) of the National Human Rights Commission Act, which states that the President shall appoint the chairperson of the commission from among the commissioners, which was not observed in this case.

Mr. Hyun Byung-chul stated in a letter on July 31, 2009, in response to a letter sent to him by human rights groups, that he would try to abolish the National Security Act. However, he reversed his position when being interviewed by the Chosun conservation newspaper on August 11, following criticism by so-called 'conservative' groups, many of

which espouse the idea of reunifying the Korean peninsula by force. Many international human rights institutions have recommended that the government should repeal or amend the Act, including the UN Human Rights Committee (Concluding Observations: CCPR/C/KOR/CO/3, CCPR/C/79/Add.114, CCPR/C/79/Add.6), Committee Against Torture (CAT/C/KOR/CO/2, A/52/44), Human Rights Committee (individual communications: CCPR/C/64/D/574/1994, CCPR/C/57/D/628/1995, CCPR/C/80/D/926/2000, CCPR/C/84/D/1119/2002) and the Special Rapporteur on the freedom of opinion and expression (E/CN.4/1996/39/Add.1). In 2004, the NHRCK itself recommended that the government should repeal the National Security Act.

This recommendation is in accordance to section 3 of the Paris Principles, which points out that a national institution shall have amongst its responsibilities to “(b) promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation”.

Mr. Hyun attended a hearing at the National Assembly on September 18, 2009 and testified that he agreed to the NHRCK staff reduction planned by the Ministry of Public Administration and Security, despite this being currently under review by the Constitutional Court. On March 30, 2009, the previous NHRCK Chairperson, Mr. Ahn, had asked for a review of the decision made by the ministry by the Constitutional Court which remained pending at the end of 2009.

Mr. Hyan also said that legally, the NHRCK belonged to the administration, although he added “but I have yet to think more about it”. This comment does little to camouflage what is a serious attempt at nullifying the independence of the NHRCK. In addition, it is in complete contradiction to the concept of independence of national human rights institutions included in the Paris Principles, notably section 5, which stipulates that, “the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”

The National Human Rights Commission Act itself clearly indicates that the NHRCK does not belong to any government institution and is independent from all administrative, legislative and judicial bodies with regard to performing its work.

Mr. Hyun appointed Mr. Kim Ok-sin as Secretary General of the commission despite the opposition of commission members due to his lack of a human rights background. According to article 16(2) of the National Human Rights Commission Act, “the Secretary General shall be appointed by the President of the Republic of Korea on the

recommendation of the Chairperson of the Commission after due deliberation of the Commission.” Mr. Hyun simply ignored the majority of commission members who opposed his recommendation, and Mr. Kim was appointed on October 5. Mr. Kim is well known for a decision he took as a judge in 1999, in which he sentenced seven people under article 3 of the National Security Act, which concerns the formation of anti-governmental organisations. This judgment was later overturned by the Supreme Court.

In a further sign of the current lack of independence arising during the restructuring of the institution, Mr. Hyun dismissed a staff member of the NHRCK on October 6, 2009, following a request by the Ministry of Public Administration and Security. This was done with no proper deliberation between commission members. Afterwards, three standing commission members requested an urgent meeting to be held regarding the staff-member’s dismissal, which Mr. Hyun ignored. The previous practice regarding restructuring was that the NHRCK would submit a plan, which would be approved by the government.

The selection and appointment processes concerning the restructured National Human Rights Commission and serious setbacks to its independence are serious concerns which illustrate the current administration’s utter disinterest in upholding and protecting human rights. The NHRC been relegated to a second-class institution. The NHRCK is now ignoring the implementation of international human rights norms and standards, and is aligning itself with the administration’s interests. It is failing to make rights-based recommendations to steer government policy, and therefore serves little purpose at present.

In conclusion, it is clear from the above report that there is a risk that the Republic of Korea, which is often looked to as a beacon of post-military dictatorship, development and human rights and democratic progress in the Asian region, is slipping back towards autocracy and the undermining of the rule of law and the primacy of human rights. The current government’s undermining of key institutions and rights is a grave concern as such momentum away from human rights can snow-ball and have a deleterious effect not only on the enjoyment of rights within South Korea itself, but also in the region, notably given the heightening tensions with North Korea. The Asian Human Rights Commission therefore calls upon the government of the Republic of Korea to realise that democracy, freedom, development and security are all best served through the upholding of fundamental freedoms and human rights, even if this means that there is an open discourse that includes criticism of governmental policy and actions. Only through vigorous and unrestrained discourse can democracy be upheld. Diversity of views and the freedom to express them will assist the country in enduring in peace and security beyond those systems in Asia where fear, social order at the expense of right, and single-party political systems reign.