

Democracy in South Korea: Mature society versus immature system

Jose Ney

The people of South Korea reached democratization after a long and painful struggle against authoritarian rule and military dictatorships. The uprising of 10 June 1987 marked a historical moment for the country, after which the June 29 Declaration enabled people to directly vote in presidential elections. Since then, South Korea has become a benchmark for democracy and human rights for other countries in Asia.

Recent years however, have shown there is little room for complacency; the genuine realization of both human rights and democracy need continual work. While South Korean civil society—especially today's youth—have significant expectations of their democratic rulers and institutions, these expectations are far from being met. In particular, the lack of public discourse and effective channels of communication are stunting democratic development. Moreover, the government is increasingly using the safeguards of democracy—the legal system and its institutions—to further its own goals.

This was most clearly seen beginning with the recent protests against beef imports from the United States and the subsequent government crackdown.

Public health concerns

In 2006, certain sanitation conditions regarding South Korean beef imports from the United States were agreed upon by the two countries, after the discovery of persons affected with mad cow disease (Bovine Spongiform Encephalopathy; BSE) in the United States. These conditions stipulated that South Korea would import only boneless beef from cows under 30-months of age, and that if any violation was found during inspections the imports would stop. Due to such violations in the same year, beef imports had been at a standstill from 2006-2008.

Prior to newly elected South Korean president Lee Myeong-bak's visit to the United States in April 2008, delegations from the two countries dramatically agreed to restart beef imports on April 18. Contrary to the 2006 agreement, South Korea would now import beef containing bones as well as Specified Risky Materials (which include brain, internal organs and spinal cord) from cows of under 30-months. Moreover, the South Korean government would no longer be able to halt or suspend beef imports if any violations of sanitation conditions are found. Needless to say, this was of severe concern to South Korean citizens.

Enormous public resistance by the people to this agreement impeded the Minister for Food, Agriculture, Forestry and Fisheries' attempt to verify the agreement in the government gazette—as legally required for the enactment of all agreements and procedures—by the end of May. In fact, the pressure from one million South Koreans participating in candlelight vigils and rallies led to the dispatch of a representative to the United States to renegotiate the agreement. The result was the Quality System Assessment (QSA) scheme guaranteeing the beef to be from cows of under 30-months.

[Pic1]

The South Korean government was patting itself on the back for a job well done in securing the QSA, oblivious to the fact that at present, the United States inspects only 0.1 percent of cows for BSE, while on its side, South Korea inspects a mere 2-3 percent of beef imports. In comparison, Japan has an Export Verification Programme that not only inspects all the beef imported from the United States, but also requires all relevant documents including the date of birth of cows to be included with the beef imports.

Without holding any public hearing or consultation, and without publicizing all the details of the agreement, the Minister for Food ordered the agreement to be put in the government gazette on June 25. It

is astonishing—and hardly bodes well for the future democracy of South Korea—that an agreement posing potential danger to public health can be put into effect not through rigorous debate in the National Assembly, but by a ministerial order.

It is no surprise that South Koreans are now deeply frustrated from the lack of communication with their president and his government, and his one-way style of policymaking. During the three months of protest, Lee Myeong-bak was twice forced to offer public apologies, ‘regretting his insufficient response to the people's demands’. Despite such ‘regret’, the government's logic is that it must abide by the agreement in order to make its bilateral Free Trade Agreement with the US effective, notwithstanding concerns of faulty translation or misunderstanding of facts. All it has left to say is: ‘Believe USA. US beef is safe.’
[pic2]

More than 100 days of protest

After the initial agreement in April, one of the first reactions was the airing of an episode entitled 'Is U.S. Beef safe?' by the popular television programme 'PD Notebook'. In response, several middle school students who feared the beef in their school meals could contain mad cow disease held a candlelight vigil on May 2. Meanwhile, the 'People's Conference against Mad Cow Disease' was formed, consisting of about 1700 civic groups from around the country. Since May 6, this coalition group has facilitated forums where people could voice their concerns on the agreement and disease. Beginning May 26, hundreds of thousands of South Koreans began taking to the streets, calling on their government to renegotiate the agreement.

Despite the peaceful and non-violent nature of the protests and demonstrations, the police consistently attempted to blockade and harass the protesters. Police vehicles were used to block all roads leading to the demonstration, while trains would not stop at stations near the demonstration. Riot police were even mobilized to block all entrances/exits of the subway and pavements.

Regardless of their frustrations, demonstrators resisted provocations to indulge in violent behavior. If anyone was seen using violence, chants of 'Non-violence! Non-violence!' were immediately heard. Civic groups also played an active role to prevent any possible violence by both demonstrators and the police. Lawyers groups organized themselves to provide demonstrators with on-the-spot legal advice regarding what actions can be taken at times of arrest. 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 instigated by riot police. Staff from the National Human Rights Commission were also present at the demonstrations to monitor any abuse of human rights. All of these voluntary activities continued daily for over 100 days. During this time, not a single incident of theft or any other crime was reported.

[pic4]

The following describes the various ways in which civil liberties of the demonstrators were curtailed.

Restrictions on freedom of assembly

According to article 21(1) of South Korea's constitution, "All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association." Furthermore, article 21(2) notes that "Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized."

In contrast to the freedoms guaranteed by the constitution, the Act on Assembly and Demonstration requires police permission to be obtained before the holding of any assembly or demonstration. Without such permission, individuals exercising their constitutional rights are considered to be participating in illegal acts. Facilitators of the recent candlelight rallies were unable to obtain approval for their assembly; furthermore, the police issued the disapproval notice just a few hours prior to the scheduled assembly, rendering it impossible to appeal the decision.

When demonstrators are expected to express opinions against government policies, protest approval often comes from higher authorities. Generally, those who oppose government policies are not allowed to hold assemblies, while those supporting government policies can even expect police protection during their assemblies.

The Act on Assembly and Demonstration has been arbitrarily interpreted by the Senior Superintendent of police or the Commissioner General. For instance, according to article 10, no one is allowed to hold any assembly or demonstration before sunrise and after dark unless they obtain permission from a nearby police station. The police interpretation of the article is that no assembly and demonstration is to be permitted before sunrise and after dark.

Unnecessary/excessive use of force

The South Korean police have failed to distinguish between assemblies that are 'illegal' and those that are 'violent'. Rather, the two are seen as one concept; an illegal assembly that is violent. This obviously affects the way the police deal with the demonstrators.

During the recent protests, demonstrators would sit in front of the parked police vehicles preventing them from marching. According to the procedure for dispersing illegal assemblies, police must first notify demonstrators that they are holding an illegal assembly three times. If demonstrators do not voluntarily disperse after listening to the notice, the police can forcibly disperse them, in accordance with the regulations for using force. Furthermore, if any demonstrators are arrested for holding an illegal assembly, they are to be informed of the Miranda Principle, which includes the reason of arrest, place to be taken and their legal rights.

[pic3]

In reality, riot police used their shields and batons not to protect themselves, but to intimidate and assault the demonstrators during dispersal. They also used water cannons and fire extinguishers on the demonstrators. The police blatantly violated their code of conduct and directly targeted demonstrators. As a result, many demonstrators had over half of their ear drums destroyed.

Individuals arrested were never notified of the Miranda Principle, nor were they allowed to speak to the legal counselors present. In fact, legal counselors themselves were also arbitrarily arrested if they protested against police actions. Meanwhile, human rights defenders including activists, journalists and medical volunteers were also indiscriminately assaulted in the process of dispersal and injured by metal bars and fire extinguishers, reported to be thrown by the police. Staff from the National Human Rights Commission were similarly assaulted and injured.

By July 31 the police had reportedly arrested 1042 demonstrators on the scene; investigated nine who were subsequently detained, while 946 were investigated without detention; taken 56 persons to court for trial on a minor offence and; released 31 with a caution. Additionally, at least 167 people were arrested on the night of August 5, protesting the visit of US president George Bush.

The prosecutor has announced that those arrested for violations of the Act on Assembly and Demonstration and the Road Traffic Act, would be fined between 1,000,000 KRW to 3,000,000 KRW (USD 1000-3000). This is a relatively high figure; considering that there was no great threat to public order, a minimum levy should have been applied. In fact, the high penalty seems to be being used as a tool to suppress people's freedom of assembly, demonstration, opinion and expression.

To worsen matters, earlier this month on August 5, the South Korean police formed a special group of trained officers for the specific purpose of arresting demonstrators who used violence. The police also proposed a plan that money will 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 will be paid 20,000 KRW (USD 20) for a person arrested and investigated without detention and 50,000 KRW (USD 50) for a person arrested and investigated with 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 the year's end.

Freedom of conscience and military service

Another interesting fact to note is that South Korea's riot police are not in fact professional police officers, but young men conscripted as battle and auxiliary police.¹ Since it is the constitutional duty of every man to serve in the army for 24 months, some conscripts are randomly recruited as battle police, while others apply to join the auxiliary police.

Four of nine Constitutional Court members in 1995 opined that dispatching such battle police members to suppress demonstrators breached the duty of national defense according to article 39(1) and (2) of the constitution. Furthermore, these practices of mandatory service have also rendered the South Korean government unable to ratify the International Labor Organization (ILO)'s article 29 on forced labor.

Several studies have found that these young men suffer from sleep deprivation, poor quality rations and long, heavy-duty labor during their service. Their freedom of conscience is also seriously violated, as they are obligated to follow orders to assault unarmed civilian demonstrators with police shields and batons.

Lee Gil-jun was one such conscripted auxiliary police member, who used force against the demonstrators. He later objected to military service and held a sit-in protest for two days at the Myeong-dong Cathedral before returning to his unit. Ignoring his objection, his commander repeatedly ordered him to mobilize. Due to his resistance, Lee has been detained for disobedience. Conscientious objectors in South Korea are usually sentenced to one-and-a-half-years imprisonment.

After seeing his colleagues being sent to police the demonstrations, Lee Gye-deok—serving his national defense duty in the battle police—requested to be transferred to the army. He also expressed his frustration and regret regarding police treatment of the protesters via the internet. While there has been no response to his transfer request, he has been ill-treated by his colleagues and unit commander, and received repeated disciplinary punishments.

¹ The system of battle police has its roots in the Korean War, and the Act on Establishment of Battle Police was introduced in 1970. The Act was amended in 1983 to add a system of Auxiliary Police. Both battle and auxiliary police officers were meant to assist professional police in public security measures, particularly during anti-government demonstrations or labor strikes.

Various United Nations human rights bodies including the Human Rights Committee have recommended that South Korea adopt a system of alternative military service to guarantee the basic rights of its citizens in accordance with international norms and standards. Although a Research Committee on Alternative Service finished its research in 2006, and its plan for alternative service was supposed to start in 2009, just a few months ago, the Ministry of Defense announced that a new research committee will be set up to evaluate the matter.

In the meantime, the lack of recognition of conscientious objection to military service and any alternative military system has led to an estimated 3761 youth being imprisoned between 2002-2006. While they take their imprisonment as a rite of passage, their criminal record causes difficulties in obtaining employment, as well as being a source of social discrimination.

Freedom of opinion and expression

During the three months of protest, spokespersons from the Blue House (presidential office), the ruling Grand National Party and a few newspapers with a high subscription raised allegations that the protests and rallies were being 'masterminded'. The newspapers fabricated stories regarding the motives and activities of the demonstrators. In response, angry demonstrators campaigned not to buy, read or recommend those newspapers to others. Some internet users also uploaded a list of companies advertising with those newspapers, asking for individuals to appeal to the companies to withdraw their advertisements.

For several days afterwards, the newspapers wrote that their advertisers had received threats and urged the government to conduct investigations. The prosecutor's office usually begins any investigation only upon receiving formal complaints from victims, but in this case it began an investigation without any complaint from the involved companies. Upon being criticized for its actions, the prosecutor's office encouraged several company owners to lodge complaints.

In the meantime, about 20 persons who posted the list of companies on the internet were forbidden to leave the country, due to being under investigation. One of these persons only found this out when he went to Incheon airport to attend a meeting and see the Pope in Rome. This case is still being investigated.

Similarly, the prosecutor's office is currently investigating four producers of 'PD Notebook' for civil and criminal defamation, in response to a request by the food and agriculture ministry.

To control material being published on the internet—as well as those publishing it—the president of the Korea Communications Commission has announced its plan to amend the law and increase the number of websites where a person cannot write an article without verification of identification—internet users have to fill out a form with their name and national ID number.² So far, 37 internet portals have forcibly adopted this system, with the number to be extended to 268.

In the same authoritarian vein, the Ministry of Justice is to create a new criminal offence called 'insult on cyberspace'. Any writing anywhere on the internet that defames someone's honour or reputation, can result in a criminal penalty for the author. While decriminalization of defamation is the international

² In South Korea, the national ID number can be used by public institutions (police, health organizations) to access personal records such as date of birth, current address, completion of military service and criminal records, which are all stored on a central database.

trend, the South Korean government is moving so far the other way as to create criminal offences in cyberspace. The government alleges that criminalizing defamation is the best way to prevent offences to persons' honour and reputation. And yet, this must be weighed against the easy targeting of those opposing government policies or voicing allegations against politicians and government officials.

Control of media

Together with limiting people's freedoms of expression and opinion, the new government has made several attempts to control the country's media. This has been another issue taken up by civil society in recent times. An individual working at the presidential election camp for instance, has already been nominated as the president of YTN, one of South Korea's cable news channels. The dismissal of the CEO of KBS—one of the most reliable public broadcasters in the country—is another instance of controlling the media.

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 Jeong Yeon-ju, 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 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; whether the president has the authority to dismiss him. It is now left to the judiciary to interpret the law and clarify the matter.

The next level of democracy

South Korea's democratization in 1987 after a sustained period of military rule brought important changes in the country's laws and institutions. Of particular importance was the amendment of the constitution, allowing for direct presidential elections. Through these various laws and institutions, formal democracy was set up. The recently amended criminal procedure law will further strengthen this formal democratic infrastructure. However, South Korea still has a considerable way to go in strengthening substantial democracy—its system for democratic governance.

South Korea is now facing its second test for democracy: how to strengthen democracy after democratization. How it responds to this challenge will be keenly watched by citizens and governments throughout Asia, who are learning that there is much more to democracy than casting ballots in elections, as they struggle to stabilize and strengthen their own democratic foundations. South Korea's foundations were set some 20 years ago. However, the very institutions and mechanisms set in place to cement democracy are now being used to further the aims of government in a decidedly undemocratic manner.

The government is also increasing restrictions on citizen freedoms, particularly on the freedom of opinion and expression, which are essential to a healthy democracy. The rhetoric of economic development and the geopolitical situation in the Korean Peninsula have long been used to suppress discussion and progress on human rights and democracy. The government's recent amnesty to various high-profile individuals for tax evasion is an example of how its policies and rhetoric consistently ignore marginalized sectors of society however, benefitting only the wealthy and powerful. Furthermore, there is at present no

platform where voices speaking in favour of alternative ideologies or political positions can be heard of where genuine public debate can occur.

While South Korea's civil society has shown itself to be particularly mature and responsible in articulating its demands in a lawful manner, there is a gap between civil society and those in government. South Korea is at a state where the institutions of democracy exist, and where ordinary citizens are democracy-savvy. And yet, contrary to what they have been taught to expect from democracy, the post-1987 generation experience systemic inconsistencies and injustices.