



SOUTH KOREA

Human Rights in the Emerging Politics

Report of a Mission

by

Mr. Stephen A. Oxman, United States
Prof. Otto Triffterer, Federal Republic of Germany
Mr. Francisco B. Cruz, Philippines

INTERNATIONAL COMMISSION OF JURISTS

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International Commission
of Jurists (ICJ)
Geneva, Switzerland

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from 25 March to 12 April 1987

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Preface

From 25 March to 12 April 1987, the International Commission of Jurists sent a Mission to South Korea to examine the March 1981 Constitution and the controversy over the electoral laws in the light of the forth-coming elections. The Mission was also asked to enquire into recent developments in the field of human rights, with special reference to the emergency powers of the government including the security laws and their application; powers to arrest and detain, and the treatment of detainees; the independence of judges and lawyers; the situation of students and academic freedom; and freedom of the press and freedom of expression.

The three members of the Mission were:

- Mr Francisco B. Cruz, a practising lawyer in Bacolod City, the Philippines, and a member of the Legal Aid Office of the Social Action Center of the Diocese of Bacolod and of the Free Legal Assistance Group;
- Mr Stephen A. Oxman, partner in a New York-based law firm and member of the board of directors of the American Association for the ICJ and of the Legal Aid Society of New York. From 1977 to 1980, Mr Oxman served in the US Department of State as special assistant and then as executive assistant to the Deputy Secretary of State and thereafter as a Consultant to the Secretary of State;
- Professor Otto Triffterer, a German specialist in Comparative Criminal Law and Professor at the University of Salzburg, Austria.

In addition to the members of the Mission, the ICJ is grateful to Dr Lee Tai Young, its Vice-President and head of the Korea Legal Aid Center for Family Relations and to the Korean National Council of Churches for the help it received in planning the Mission, and to all those who gave generously of their

time in furnishing information to its members, including representatives of the government.

The Mission was made possible by a grant from the Diakonisches Werk of the German Evangelical Church to whom the ICJ also extends its thanks.

Niall MacDermot
Secretary-General
International Commission of Jurists

December, 1987

Introduction

From 30 March through 11 April 1987, a Mission of three lawyers chosen by the International Commission of Jurists (ICJ) visited Seoul, South Korea to inquire into the human rights situation in that country. The Mission consisted of Mr. Francisco D. Cruz, a practising lawyer in the Philippines; Mr. Stephen A. Oxman, a practising lawyer in the United States; and Dr. Otto Triffterer, a professor of comparative criminal law at the University of Salzburg in Austria.

The Mission arrived in South Korea at a time of growing political unrest due to the change of government scheduled to take place in early 1988. It was the goal of the Mission to gain a fuller understanding of the political situation and of its effects on the degree to which internationally recognized human rights are being respected by the government, and enjoyed by the people, of South Korea. To achieve this goal the Mission met with a significant number of representatives of the government and of formal and informal groups that strongly oppose the government.

The government of South Korea was informed of the Mission in February, 1987. Through its ambassador in Geneva, the government initially expressed concern that the Mission might be used by partisan groups in South Korea involved in the then pending negotiations for amendment of the constitution and electoral law. When told that the Mission would not make statements to the press while in South Korea, the government's concerns abated, and on 12 March 1987, the Minister of Foreign Affairs, Mr. Kwang Soo Choi, wrote to the Secretary-General of the ICJ to state that the government would welcome the Mission and provide cooperation during its stay in Seoul.

The planning and logistics for the Mission were handled in South Korea by Dr. Lee Tai Young, a Vice-President of the ICJ and head of the Korea Legal Aid Center for Family Relations in Seoul, as well as by the Korean National Council

of Churches. In addition, members of the Mission scheduled a variety of meetings on their own initiative.

In general, the Mission was able to meet with whomever it wished in the opposition, although some people declined to meet with the Mission on the ground that they might suffer reprisals from the government for doing so. It seemed evident that the government was closely monitoring the Mission's activities and inquiries. This even reached the point where a representative of the Korean security services carrying a walkie-talkie followed members of the Mission at a distance of about two feet as, in the company of people who had invited them to dinner, they ascended a stairway in a restaurant to reach the private room where the dinner was to occur. In addition, each time the Mission entered the headquarters of the Korean National Council of Churches, where several of its meetings were held, it was evident that government security personnel were present at the entrance observing the movement of all who entered and left the building. Also, the members of the Mission were warned by various people that the phones in their hotel rooms might be tapped, and that any papers left in the rooms might be read and perhaps removed by government security personnel. The Mission could not verify whether its phones were tapped and adopted the practice of not leaving sensitive documents in the hotel rooms.

The government representatives with whom the Mission met included Mr. Kim Choong Nam, President Chun's advisor for political affairs. The Mission also met with Mr. Shin Doo Byong, the Director-General for Information and Cultural Affairs at the Ministry of Foreign Affairs, and members of his staff. (The Mission had originally been scheduled to meet with Mr. Park Soo Gil, the Assistant Foreign Minister for Political Affairs, but was advised upon arriving at his office that he had been taken ill).

The Mission also met with Mr. Lee Young Sup, the Chairman of the Special Committee for Human Rights that had been formed by the government in February 1987 in the wake of the death by torture of a student named Park Chong Chol, at the hands of the security services. (This death, which is treated at length later in the report, was a major traumatic event in Korea's political life, leading to widespread protests, as well as to the dismissal of the interior minister and the national police chief.) Mr. Lee had served as a justice of the Korean Supreme Court for 18 years until his retirement in 1981, at which time he was serving as chief justice.

The Mission also met with Mr. Kim You Hoo, the Assistant Minister of Justice for Legal Affairs, along with members of his senior staff, including Mr. Kook Hyun Yoo and Mr. Hong Seok-Joh.

Further, the Mission met with a prominent spokesman for the ruling

Democratic Justice Party, Congressman Hyun Hong Choo.

With respect to non-governmental individuals, the Mission met with the two leading opposition political figures, Mr. Kim Dae Jung and Mr. Kim Young Sam (the "two Kims"), as well as Cardinal Kim Soo Hwan, the Archbishop of Seoul. The Mission also met with a significant number of other non-governmental individuals representing religious, women's, farmers', lawyers', and students' groups. Because the members of the Mission are not sure whether these individuals might suffer adverse consequences by virtue of having met with the Mission, it has been decided not to provide a list of their names. Suffice it to say that the Mission felt from the many meetings it had with non-governmental individuals and groups that it was able to obtain a fairly comprehensive description of the human rights problems in Korea as seen by the opposition.

In conducting its interviews in South Korea and in preparing this report, the members of the Mission were conscious of the desirability of not duplicating other recent reports on the human rights situation in South Korea. In particular, the members of the Mission had reviewed the Asia Watch report of January 1986 entitled *Human Rights in Korea* and the Amnesty International report published in 1986 entitled *South Korea, Violations of Human Rights*. These two reports essentially cover developments up to the end of 1985. The Mission therefore decided to focus its inquiry on events from January 1986 to the present. Furthermore, this report will look at the human rights situation in South Korea through the lens of the dynamic and fast-moving situation created by President Chun's promise to step down in early 1988. It became quite apparent to the Mission that the human rights situation in Korea cannot possibly be understood without primary reference to the fierce and intensifying contest for political power in that country.

Accordingly, the first chapter of this report treats the political situation in South Korea and its relationship to the treatment of individuals. Chapter Two discusses violations of the rights of physical integrity (torture, other physical maltreatment, arbitrary arrest and detention, treatment of prisoners, arbitrary search and seizure). Chapter Three deals with violations of the right to a fair trial, and Chapter Four, with violations of civil and political rights, including freedom of speech and opinion, freedom of the press, and freedom of assembly. The final chapter discusses economic and social rights, and the report ends with the Mission's conclusions and recommendations.

To write about the political and human rights situation in South Korea is like trying to shoot at a moving target. Even during the relatively short time the Mission spent in Korea, political events were racing forward and momentous developments were occurring – such as the formation of the new Reunification

Democratic Party by the two Kims. Since the Mission left South Korea, this trend has continued. Indeed, two days after the Mission departed from Seoul, President Chun made his stunning "Special Statement on Constitutional Reform" in which he announced not only the end of negotiations with the opposition on a new system of government but also the apparent banning of even political debate on the subject. This latter prohibition was so remarkable that the Secretary-General of the ICJ inquired in writing of the government of South Korea on 21 April 1987 what legal basis it believed it had for such a prohibition on freedom of speech and expression, and asked for an early reply.

Moreover, shortly before this report went to press, the streets of Seoul and other South Korean cities were filled with protests, firebombs, rocks, tear gas, and beatings, and the sense that events were coming to some sort of climax was palpable. And then suddenly, on 28 June, Roh Tae Woo, the ruling party's choice to succeed President Chun, seemed to announce that the government was giving in to the opposition's demand for direct presidential election, as well as agreeing to changes in the electoral law and the restoration of full civil rights to Kim Dae Jung. Three days later President Chun announced that he approved of these sweeping changes, although his statement included the following delphic sentence:

"I believe that the intrinsic function of politics is to carry out the public will, if only on a probational basis, and to make sure it works well." (Emphasis added.)

Whether these dramatic announcements were indeed a climax remained to be seen as this report went to press.

At all events, while the target is indeed a fast-moving one, it is the hope and conviction of the Mission that this report, and the fact of the Mission's having taken place, can play a salutary role in advancing respect for human rights, democracy and the rule of law in South Korea.

Chapter One

The Political Setting

Background: 1981 to 1986

The present constitution of Korea was adopted in October 1980 by referendum, but under strict martial law conditions. (Former President Park Chung Hee had been assassinated in October 1979, and shortly thereafter Major General Chun Doo Hwan began to expand his power.) The new constitution provided for a strong executive and indirect election of the president, limiting the president to a single seven-year term. Martial law was ended in January 1981, but the government retained broad powers to control dissent, relying on laws that had been enacted during the martial law period. In early 1981 elections were held under the new constitution for a national assembly and an electoral college. The electoral college elected President Chun to a seven-year term beginning in March 1981. Various governmentally imposed restrictions, along with governmental screening of electoral college candidates, resulted in the absence of any effective opposition to President Chun, who won almost unanimously.

After the 1981 elections, political stability in South Korea seemed gradually to increase until the 1985 national assembly elections. Only weeks before those elections, opposition figures who had recently been freed from a governmental ban on their political activities formed a new party – the New Korea Democratic Party (NKDP). The most prominent opposition leaders, the two Kims, were not allowed to participate in that election. It was nevertheless heavily contested, and the NKDP obtained a surprising 29.2% (compared to the government party's 35.3%) of the popular vote. While the government party (the Democratic Justice Party or DJP) retained a comfortable majority of

assembly seats (for reasons which are discussed below), the NKDP attracted, after the election, assemblymen from other opposition parties and became the largest opposition party in the parliamentary history of Korea, with approximately one-third of the seats in the 276-member assembly. This proved to be a watershed event in the political development of South Korea, giving great momentum to the NKDP and other oppositionists, and perhaps making it inevitable that in the run-up to the presidential election in early 1988, the political situation in South Korea would continue to intensify.

While these significant political changes were taking place between 1981 and the beginning of 1986, the economic changes that were occurring during roughly the same period were also very striking. According to figures given to the Mission by the Ministry of Justice, the population of the country increased, between 1980 and 1985, from 38.1 million to 41.0 million (an increase of 7.6%), whereas the GNP of the country grew from \$60.3 billion to \$83.7 billion (a 39% increase), and GNP per capita from \$1,508 to \$2,047 (a 36% increase). As for the number of college students, it grew even more dramatically, from approximately 580,000 in 1980 to over 1,200,000 in 1985, an increase of 108%. (This latter statistic is especially significant in view of the degree to which opposition to the government is expressed and carried out by student groups.)

It is interesting to view these developments in the even longer time-frame of the decade and a half between 1970 and 1985. According to the statistics provided by the Ministry of Justice, during that period the population of the country increased from 32.2 million to 41.1 million (a 27% increase), whereas the GNP increased from \$8.1 billion to \$83.7 billion (a 1,033% increase!), GNP per capita from \$223 to \$2,047 (a 917% increase), and the number of college students from approximately 171,000 to over 1,200,000 (an increase of over 700%).

When one views these economic figures in juxtaposition to the political situation in Korea, what emerges is the picture of a country that has undergone staggeringly successful economic advancement but whose political development has been slow and fitful by comparison.

Events Since January 1986

Negotiations reach an impasse

In the wake of its success in the 1985 national assembly elections, the NKDP and other opposition elements commenced 1986 by demanding not only revision of the assembly election law but, more importantly, constitu-

tional reform. They launched a petition campaign in February 1986 in support of the position that the constitution should be amended to provide for direct popular election of the president.

While stating that he intended to step down in 1988 in order to provide for a peaceful transfer of power, President Chun was nevertheless hostile to the petition campaign. The government declared the campaign illegal and initially tried to block it, in part by placing some opposition leaders under house arrest.

By late spring the government's position had changed, in the face of significant opposition pressure brought to bear in part by large public demonstrations throughout the country. President Chun agreed to negotiations between the government party and the opposition parties aimed at seeking agreement on an amendment to the constitution. He stated that if such agreement could be reached, he would support amendment of the constitution before the 1988 presidential election. (Under current law in Korea, amendment of the constitution requires approval by a two-thirds majority in the national assembly and approval by a simple majority of voters in a national referendum. See Articles 129, 130 and 131 of the Korean Constitution.) As the negotiations between the opposing sides began, the government set forth its position: it proposed a parliamentary system of government, with a strong prime minister elected by the national assembly.

In the negotiations there were certain elements on which the opposing sides could agree. First, there was consensus that the democratization process in Korea should be accelerated. Second, there was consensus that greater local political autonomy should be instituted. (Remarkably, at present in Korea, the only elected officials are at the national level. Local government is in essence run by officials – approximately 700,000 of them – who are appointed by the ruling national political forces, not elected by the people affected.) Despite this common ground, the opposing parties in the negotiations were essentially unable to make further headway. By early 1987, the negotiations had come to a complete impasse on the core issue of whether the constitution should provide for direct popular election of the president, as the opposition was demanding, or for a parliamentary/cabinet system, as demanded by the government party.

The break-up of the NKDP

Events reached a new level of controversy while the Mission was in Seoul: the announcement by the two Kims on 9 April 1987 that they would break away from the NKDP along with 73 NKDP assemblymen and form a new political party (subsequently named the Reunification Democratic Party). This

break-up followed a series of feuds within the party concerning questions of party leadership and the party's policy on constitutional reform. In effect, the two Kims were able by this mechanism to purge the ranks of the NKDP of those members who were not as adamant as they and their followers about pushing for direct presidential elections and opposing the parliamentary/cabinet form of government. As Kim Young Sam put it at a press conference on 9 April, he and Kim Dae Jung were resolved to create a "clear-cut and powerful opposition party in order to realize the people's ardent aspirations for the restoration of democracy." He asserted that the dispute within the NKDP was not merely an internal affair but rather the result of political manoeuvring by the ruling camp.

The Mission met with Kim Dae Jung, including a meeting by one member of the Mission on 9 April, a few hours after the break-up of the NKDP had been announced. The meeting occurred at Kim Dae Jung's home in Seoul. He had recently been placed under house arrest for the 53rd time since his return to Korea from the United States in early 1985. His home was surrounded by Korean security and national police personnel. He was asked to comment on the impasse that had been reached and the developments of that morning. He said that the impasse was not the result of obduracy by the opposition party. He said that to break the impasse and move the negotiations forward, he had sought a meeting with President Chun along with Kim Young Sam, but that President Chun had refused to meet them. He said that in the negotiations with the government, the opposition had offered to have the choice between systems (direct presidential election versus a parliamentary system) put to the people in the form of a referendum. He explained that in his view this offer represented an extremely significant compromise by the opposition side, since under the existing electoral machinery it is not all clear that the opposition would be given a fair chance. Nevertheless, he said, he and his colleagues felt sufficiently strongly that their position would win in any referendum that they were willing to make this offer. He stated that another concession he had offered was to state that he would himself not run for president.

Kim Dae Jung conceded that both a direct presidential election system and a parliamentary system could be democratic, but in his view the people would obviously choose the system of direct presidential election because they are overwhelmingly (*i.e.*, 90%) opposed to the military government and know that the only way to remove it would be through the system of direct presidential election. The parliamentary system, by contrast, would in his view be used by the governing forces to "divide the people's attention," since there are approximately 100 electoral districts, and would thus preclude the possibility of ridding the country of the military government.

In his view, President Chun had already decided to maintain the present constitution and had set about instigating strife within the opposition. A recent meeting of the NKDP's disciplinary committee was violently broken up by certain people in attendance. This was attributed by Kim Dae Jung to the government's having paid hoodlums to cause the disruption.

Kim asserted that there is a growing feeling of despair among the Korean people, which is leading various elements in the Korean society to believe that only through violence can they achieve democracy. He said that the Korean people are certainly mature enough politically to restore democracy in 1987 or 1988. He pointed out that under President Park there were 420 political prisoners whereas now there are approximately 2,000. He asserted that between 50,000 and 100,000 Koreans are ready to go to prison for the cause of democracy and that they are not afraid of punishment.

With respect to the key issue of security vis-à-vis North Korea, Kim Dae Jung asserted that the will of South Koreans to resist North Korean aggression depends upon the degree of democracy that exists in South Korea. With democracy, in his view, South Korea will become another West Germany. It has more people and better educated people than the North, he pointed out, and has a GNP many times the size of the North's. The Korean people on both sides of the demilitarized zone speak the same language and have the same blood, he stressed, and someday they will be reunified.

The government's response

The government's response to the deadlock that had occurred in the negotiations on constitutional change and to the break-up of the NKDP, in effect came with President Chun's "Special Statement on Constitutional Reform" on 13 April. In that statement, he deplored the fact that the efforts to amend the constitution by consensus had not made any headway. He said that since assuming the presidency he had exerted all his energy to realize a peaceful change of government and had been committed to rooting democracy in Korea by all means. The ruling Democratic Justice Party had proceeded, he said, in the spirit of compromise, as indicated by the fact that at the outset of the negotiations it had changed its policy of opposing any amendment to the constitution and instead had devised an amendment providing for a parliamentary/cabinet system. Nevertheless, he asserted, the opposition simply "stubbornly stuck to its demand for a direct presidential election system and has yet to yield even an inch of ground." "It is difficult to understand" he said, "how on earth the minority party intends to resolve the constitutional issue

and to practice democratic principles even while rejecting any and all forms of compromise."

While reiterating his pledge not to try to succeed himself, he asserted that the historical experience with the direct presidential election system in Korea had not been a success but rather had been characterized by "overzealous election campaigns throughout the nation [that] bred rampant terrorism and violent disturbances," as well as candidates who made "grossly unrealistic campaign promises," with the result that "regional antagonisms were inflamed, sharply dividing the people." He noted that in all of the six direct presidential elections that occurred in the past, the government party had won. This, he said, had lead to the widely accepted conclusion that a direct presidential election system inherently favours the ruling party, and therefore the opposition was always unwilling to accept the legitimacy of the election. "It is because of such defects and dangers," he said, "that the presidential system, together with our unfortunate constitutional history was buried in the past."

"To try to revive a superannuated system today when the nation has been rapidly developing and the people have attained a matured political attitude, is tantamount to trying to turn the clock back," he claimed. He asserted that the ruling party's proposal of a parliamentary/cabinet system was a good compromise that "would be capable of satisfying the diverse desires of the various segments of the pluralistic society that we have today, and would make it possible for the government party and the opposition to coexist as partners in government, rather than be embroiled in obstinate confrontation."

He then turned to the recent break-up of the NKDP, claiming that the opposition "had made the prospects for any constitutional reform by consensus extremely dim by involving itself in severe intra-party chaos and in fighting." "In view of the mess in the opposition camp these days," he continued, "it is not difficult to see that the implementation of our political agenda would be greatly set back if we continued to wait indefinitely for it to come around." "Time has run out and we cannot wait any longer for a consensus to emerge," he said. This "state of affairs poses a truly grave dilemma especially for me," he continued, "in view of my unchangeable commitment to honour the pledge to step down at the end of my term of office."

He said that the process of amending the constitution would require several months of debate and action in the national assembly, as well as a national referendum, and several more months would have to be spent on preparing and enacting revised election laws and then holding elections under the modified laws. Based on all these factors, he went on to make the following crucial statement:

"At this critical juncture, I must thus make a momentous decision in light of the urgency of time and also of the overall domestic situation. Having determined that it has been impossible to amend the constitution during my tenure, I hereby announce that in accordance with the existing constitution, I will turn the reins of government over to my successor on February 25, 1988, when my term of office ends. At the same time, in order to insure the successful accomplishment of the two major national tasks of a peaceful change of government and the Seoul Olympics, I declare the withholding of counterproductive debate on constitutional change which would only split public opinion and waste national energies."

As if foreseeing the turmoil and strife that his statement would cause, he went on to say:

"If some segments of society continue to be engrossed in futile factional strife over the constitutional issue, and to attempt to create social chaos through illegal activities and violence, thereby destabilizing the life of the nation, I make it clear that I will resolutely deal with them by exercising all the powers vested by the constitution in the office of the President in order to protect the livelihood of the people and maintain public order."

Turning to the linkage between the domestic situation in South Korea and the threat from the North, he stated:

"In particular, the North Korean communist regime, which has been constantly threatening our national security for the past four decades, is taking the mistaken view that the tribulations attendant on a change of government in the South are affording them a decisive opportunity to attain their goal of communizing the entire peninsula. Moreover, they are making all sorts of attempts to scuttle the Seoul Olympics out of jealousy over the bright prospects for its success."

In what seemed to be a direct reference to the two Kims, President Chun went on to state, "We must not entrust the future of our advancing nation to the hands of superannuated politicians from a by-gone era." "Now that the evil vestiges of protracted one-man rule are being liquidated," he concluded, "the guiding principles for all of us, but especially for politicians in this transition period, must be trust, mutual concession, patience and self-restraint."

Perhaps the most remarkable part of this remarkable speech was the out-and-out effort to ban any further debate on constitutional change. As noted above, this statement prompted the Secretary-General of the ICJ to write to the Korean government asking whether this purported prohibition had a legal

basis. That request was made on 21 April; as this report went to press no response had been received from the government.

Rising tension

From the time of President Chun's statement on 13 April until the stunning announcements in late June by Roh Tae Woo and President Chun seeming to agree to the opposition's demands, the situation in Korea substantially deteriorated, with significant street violence and a rapidly rising level of tension. According to many observers, the protests were the strongest in years and were being carried out not only by students and other young people; rather, a significant number of middle class people were observed taking part in the demonstrations. For its part, the government responded with a certain degree of restraint, *i.e.*, the police and other security personnel in the streets were apparently not armed, and they relied on tear gas and other non-lethal means. President Chun did agree to meet with Kim Young Sam in mid-June but the meeting, while symbolically very important, did not lead to any immediate improvement in the situation.

The level of unrest was clearly a cause of major concern to the government. This was no doubt in part a result of concern about the effect such unrest might have on the prospects for holding the Olympics in Seoul in a little over a year. Indeed, the International Olympic Committee was reported in the press to have announced in June that if the violence did not subside, there would have to be serious consideration given to cancelling the Olympics.*

With this deadlock, the various ideas of the opposing sides for amending the constitution seemed to have been overtaken by events and rendered temporarily moot – until the government's apparent about-face in late June. It now seems that the deadlock may be broken and that the parties will recommence negotiations. Thus it is still relevant to consider the present system in Korea for electing the national executive and the national assembly and to touch upon the broad outlines of the changes in the status quo which the government and the opposition were discussing prior to the onset of the fierce deadlock.

* According to the International Herald Tribune, the Olympic Committee said in July 1987 there was no question of holding the games elsewhere. They would be held in Seoul or not at all. They denied earlier reports that they would look for another place.

The Present Electoral System

The Presidency

Under the current Korean constitution and statutes, the president and members of the national assembly are the only elected officials in Korea. The president is chosen by a popularly elected electoral college of approximately 5,000 members. The president is limited to a single seven-year term, and the constitution may not be amended to allow the incumbent president to run for another term.

The difficulty and controversy concerning the electoral college arises in part from the fact that there are very wide departures from the principle of one person, one vote in the way it is selected. More specifically, taking the figures from the 1981 presidential elections as an example, it is quite apparent that certain areas – typically urban areas where the opposition parties find most of their strength – are significantly under-represented in comparison with rural and other areas. Thus, for example, Seoul with a population at that time of 8,469,188 was allocated only one elector for every 9,905 people. By contrast, in North Chunchong there was one elector for every 5,627 people. Put differently, a voter in North Chunchong had almost twice the electoral power of a voter in Seoul. All of this is more graphically set forth in the following chart which shows that to reach a proportional system of one person, one vote, the heavily urban areas of Seoul and Pusan would have to be allocated an additional total of 451 electors, and the rural and other areas of the country would have to give up a total of 451 electors.

The opposition parties assert that the current system is grossly unfair to them, since they are stronger in the urban areas (where approximately 60% of the population lives) than in the rural areas. They say the system is designed to and does give an advantage to the government party which is in general stronger in the rural areas than in the urban areas, and which in effect controls the local governmental bureaucracies throughout South Korea. The opposition parties also contend that the government has in large measure prevented them from effectively organizing and campaigning in the countryside in a variety of ways, for example by impeding their access to print and broadcast media.

**Presidential Electors,
1981 Presidential Elections**

<i>Place</i>	<i>Population</i>	<i>No. of Electors</i>	<i>Deviation from one person, one vote</i>
Seoul	8,469,188	855	- 337
Pusan	3,114,361	324	- 114
Kyonggi	4,760,921	670	-
Kangwon	1,786,123	299	+ 48
N. Chungchong	1,440,486	256	+ 53
S. Chungchong	2,983,890	465	+ 45
N. Cholla	2,315,013	407	+ 81
S. Cholla	3,851,393	606	+ 64
N. Kyongsang	4,985,119	755	+ 54
S. Kyongsang	3,339,493	587	+ 117
Cheju	430,128	53	+ 7
	37,476,115	5,277	

The Assembly

The current system for electing the national assembly has, in common with the presidential system, an apparent bias toward the rural areas. Members of the assembly are directly elected and serve a four-year term. Under the election law passed in 1981 there is a system of proportional representation. More specifically, there are 276 seats in the assembly and 92 legislative electoral districts. The districts are not of equal size, some having as much as four times the population of others. Thus, for example, Seoul, with approximately 25% of the country's population, has only 15% of the seats in the national assembly. Each district elects two members of the assembly, for a total of 184 seats. The 92 remaining seats in the assembly are the so-called proportional representation seats. They are awarded under an unusual system whereby the party winning a plurality of the popular vote is entitled to two thirds (or 61) of these seats.

The way this system works in practice, and the way it tends to favour at the present time the ruling Democratic Justice Party, can be illustrated by looking

at the 1985 assembly elections. In that election, the DJP ran only one candidate in each of the 92 electoral districts. Since each district elects two members, the DJP had only to come in second to assure itself of a seat in any given district. In fact, it won a seat in 87 of the 92 districts. Moreover, since it won a plurality of the popular vote – 35.3% versus 29.2% for the NKDP – it became entitled to 61 of the 92 proportional representation seats. Thus by combining its 87 seats gained in the electoral districts with the 61 seats obtained from the proportional representation pool, the DJP obtained a total of 148 seats in the 276-seat assembly, a comfortable majority. For its part, the NKDP with its 29.2% of the popular vote obtained only 90 seats, which included a combination of seats won in the electoral districts where the NKDP came in first or second, plus a certain portion of the remaining 31 seats from the proportional representation pool. On its face, the system does not contain elements of unfairness, but in practice the opposition parties feel that the system is unfair to them. We were told by certain observers that the government itself agrees that national assembly law is unfair. The law puts a great advantage in the hands of a party which is well-organized throughout the country, and not concentrated in the urban areas. The fact that local officials are appointed by the government was again cited as giving it an unfair advantage. Also, as noted above, the opposition believes the government party has seriously impeded it from organizing in the countryside.

The Proposed Changes

With respect to the changes proposed by the opposition parties, it was difficult for the Mission to pin these down with specificity. The opposition had made clear its demand for a system of direct presidential election but had not elaborated and articulated the precise form that this should take, or the precise manner in which the laws concerning election of the national assembly should be changed. In both instances, the opposition has in mind a system where there is a closer approach to the principle of one person, one vote. It judges that its chances of actually gaining power would be enhanced under such a system.

For its part, the government has also not fully elaborated its proposed changes, beyond proposing a parliamentary/cabinet system form of government. As for the national assembly, again the government was not specific as to its proposed changes.

The Mission met with Congressman Hyun Hong Choo, a leading spokesman for the government party, and asked for the government's position with respect to electoral reform. He asserted that in general the government very

much wants the people's wishes to be more broadly and accurately represented. He said that the present law concerning election of both the president and the national assembly dates from 1980 and that there has been much change in Korea since then. He said that there are two important principles that need to be followed: the principle of one person, one vote; and the principle of regional representation. On the latter point, he claimed that the differences among the regions in respect of culture, economics, and tradition justify deviation from the principle of one person, one vote. It was also necessary to take account of the fact that many urban dwellers have family roots in rural areas, he said, but he did not specify how this should be done. He said that in all events it was the government's purpose to reform the electoral system so as to resolve once and for all the so-called "legitimacy issue."

He stated further that the government had studied every conceivable option and that in general they had in mind a multiple-member district system. He said they had particularly studied the West German system of proportional representation. He said that the government was prepared to discuss any formula with the opposition. He complained, however, that the opposition had not proposed its own version of electoral reform. He stressed that under any of the formulas under consideration, the DJP believed it could remain the plurality party.

When asked why President Chun would not meet with either of the two Kims to discuss electoral and constitutional reform, Congressman Hyun said that this is still possible but that the party leaders should meet first and that following such preliminary meetings, one or both of the two Kims could meet with President Chun. He said that this type of formality was necessary in a society with a Confucian and authoritarian tradition. (As noted above, in June, after weeks of unrest, President Chun did meet with Kim Young Sam.)

With respect to the executive, Hyun argued that there was now really too much for one individual to handle in view of the explosion of issues. Instead, he said, an institution is needed as the executive, and this is what is provided by the parliamentary/cabinet system. While claiming that the DJP could certainly win a direct election for president, he asserted that the opposition party would have a chance of winning under a parliamentary/cabinet system.

With respect to the size of the electoral districts for national assembly, he said that under the new system the government had in mind, the ratio of largest to smallest would go from 4 to 1 to approximately 2.5 to 1.

In commenting on the pace of democratization in Korea, Hyun stressed that in 1988, "for the first time in Korean history," there would be a peaceful transition of power. (He and other government spokesmen seem not to want to recognize the peaceful transition of power that occurred in the elections of

June 1960, when the opposition Democratic Party defeated Syngman Rhee's Liberal Party after Rhee had been forced to step down in April of that year.) The peaceful transition of power combined with the Seoul Olympics, Hyun claimed, would make even more conspicuous South Korea's superiority over North Korea. After 1988, he continued, there would be an "all-out effort for democratization" and greater progress would be made, both in the speed and the manner of democratization. He asserted that after 1988, South Korea would have a much improved security position vis-à-vis both the Soviet Union and China and will in effect be a First World country by that time.

Political Power, Security and Freedom

The Mission was left then with the picture of a seemingly unshakeable deadlock between the opposing camps concerning the political system in Korea. It was obvious that the disagreement over the particular form the system should take was almost a façade for the real issue, namely the contest for political power. The opposition clearly feels, with considerable justification, that it has never really had an even playing field and a full and fair chance to become the majority party. For its part, the government is intent on both maintaining its power and doing nothing to give the North Koreans any basis for taking adventuresome steps towards the South.

To what degree the government's position is guided by each of these two factors, it is impossible to say with certainty. Obviously there are good grounds not only for the government but for all South Koreans interested in democracy to be deeply concerned about the security threat from the North. The demilitarized zone, after all, sits only 25 miles away from Seoul. With its armed forces of approximately 850,000 men and women – the sixth largest in the world – and its history of aggression, North Korea is indeed a mighty foe, warranting great vigilance by South Korea. Moreover, it has certainly shown itself capable of irrational and hostile actions in the recent past, including for example the assassination of almost half the South Korean cabinet when it was visiting Burma in 1983.

On the other hand, there is an interesting analogy (imperfect, to be sure) between the two Koreas and the two Germanys – an analogy that was frequently cited to the Mission by both opposition and government representatives, albeit for different reasons. West Germany, like South Korea, faces an implacable foe across a heavily militarized line. And yet the security rationale is not used in West Germany as an excuse for suppressing political freedom, as it is in South Korea. To what degree is the South Korean government using

the security threat from the North as a pretext for suppressing political freedom and maintaining itself in power? No one can know for sure. In any case, it was evident to the Mission that one of the most important things that could be done to reduce human rights violations in South Korea would be a significant lessening of tension between South Korea and North Korea.

Assuming that such a lessening of tension is not likely in the near or medium term, does that mean that political freedom in South Korea must remain stunted? This indeed is the crux of the matter. Would more democracy in South Korea weaken the country vis-à-vis the threat from the North, or in fact strengthen it? It seems obvious to the Mission that more democracy would strengthen the country, as it has strengthened West Germany, for example. It seems clear that the present policy of greatly restricting political freedom is not strengthening the country but rather leading to great divisiveness, turmoil, violence, and radicalization.

The effect of this policy on individual human rights is the subject of the remainder of this report. As the Mission inquired into abuses of individual human rights, the government representatives with whom it met repeatedly urged it not to focus on individual cases but rather to take an overall, "macro" view in which all factors, including in particular the North Korean security threat, were taken into account. But of course the individual case – not a macro view – is what human rights are all about. It is what happens to the relatively few who choose to become politically engaged and to speak out that indicates whether a society is politically free. Human rights is a question of the few. The few are the surrogates for all who would be free.

Sadly, the Mission became aware that in fact in South Korea there is very little political freedom. What happens to those who choose to become politically engaged in South Korea and to speak out against the governing orthodoxy is that they are more likely than not to find themselves arrested, jailed, beaten, denied due process, and penalized in a host of ways for trying to be free. It is indeed a tragic situation and one that cannot go on indefinitely. Something will have to give. Either the government will decide to crack down mercilessly, thereby causing the kind of killing and chaos which occurred in Kwangju in 1980, or it will decide that a genuine democratization process must be permitted to flower now. The opposition is simply too numerous, too widespread, too organized, too angry and too committed for the government to be able to hold its present hard line indefinitely. It is to be hoped that the dramatic statements by Roh Tae Woo and President Chun in late June will be translated into concrete actions that in fact lead to political freedom in South Korea – and to the greater respect for individual rights and the rule of law that would inevitably accompany such freedom.

[Ed. As this report went to press, ruling and opposition leaders agreed on a new constitution which would allow direct presidential elections to take place late in 1987. The constitution, which has to be approved by the national assembly and in a public referendum, also includes provisions limiting presidential power to declare martial law and ending presidential power to dissolve parliament.]

Chapter Two

The Right to Physical Integrity

The Legal Situation

Constitutional guarantees and their protection through criminal law

The right to physical integrity is guaranteed in the constitution and through other laws of the Republic of Korea.

The constitution provides in Chapter 2 article 9, entitled "Rights and duties of citizens", a broad concept which reads as follows:

All citizens shall be assured the dignity and value of human beings and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals".

This basic concept is elaborated in other articles which are of particular importance in the situation with which the Mission was confronted in Seoul. These include freedom from torture and from arbitrary arrest, detention or punishment; equality before the law; the right to judicial review of arrest or detention; the inadmissibility of a forced confession or a confession which is the only evidence against a defendant; protection from retroactive legislation and from vicarious punishment; and freedom from arbitrary search and seizure and from prosecution for an act which was not a crime at the time it was committed.*

* Articles 10, 11, 12 and 15.

These constitutional provisions are repeated and further developed in the criminal code, the code of criminal procedure and the rules of criminal procedure.

For example, the provisions of articles 124 and 125 of the criminal code are aimed at preventing illegal arrest and detention or maltreatment and the use of force by state officers. They read as follows:

"Article 124 (Unlawful arrest and unlawful confinement) (1) A person who exercises, or assists in, judicial, prosecutory, police and other functions involving the restraint of the human body, by abusing his official authority, arrests, or imprisons another, shall be punished by penal servitude for not more than 7 years and suspension of qualifications for not more than 10 years.

(2) Attempts to commit the crimes described in the proceeding section shall be punished.

Article 125 (Violence and cruel conduct) A person who, in performing or assisting in, functions of judgement, prosecution, police or other functions involving physical restraint in the performance of his duties, commits an act of violence, or cruelty, against a person suspected of a crime or against another person shall be punished by penal servitude for not more than 5 years and suspension of qualifications for not more than 10 years."

It has been claimed by government officials, that the criminal law protecting individual liberty against violations by investigating officers has provided much higher penalties since 1983 when the first case of death by torture occurred. However, in the latest edition of the criminal code, articles 124 and 125 have the same penalty as in the 1956 edition and also there has been no change in the penalties provided for in the articles mentioned in the following sections.

It is noteworthy that the penalties provided for in the criminal code for causing death or injury through negligence are relatively light – up to five years imprisonment or a fine for injury or death resulting from gross negligence or negligence in relation to professional duties and up to two years imprisonment or a fine if injury or death results from 'ordinary' negligence.

However, article 135 provides that if a state officer commits such a crime while on duty, the punishment provided by law can be exceeded by half the amount.

Exceptions and special regulations

The Mission was not informed of any legislation limiting the constitutionally guaranteed right to physical integrity, nor did we see or learn of any situation in Seoul, which would have justified restricting those rights by law. The Mission therefore noted with surprise that the National Security Act with its vague descriptions of crimes, which do not fulfil the demands of the principle *nullum crimen nulla poena sine lege**, was not only still in force but was used regularly to limit the freedom of persons who spoke up against the government.

The purpose of the Act is defined as the "control of anti-State activities, which endanger the national security", and anti-State organisations are to be "construed to mean such an association or group" within the Republic or abroad "as organised for the purpose of assuming the title of the government or disturbing the State" or "that operates along with the line of the communists" to achieve such a purpose (articles 1 and 2).

However, it is article 7 which is mainly used to punish anti-State activities; it reads as follows:

"Article 7 (Praise, Encouragement, etc.) (1) Any person who has benefited the anti-State organization by way of praising, encouraging, or siding with or through other means, the activities of an anti-State organization, its member or a person who had been under instruction from such organization, shall be punished by penal servitude for a term not exceeding 7 years."

This applies equally to praising, etc., "the activities of the lines of the communists abroad" (para. 2). Organizing an association to commit such actions, disseminating false facts concerning such matters, producing or distributing information for the purpose of committing such actions are also punished (article 7, paras. 2 to 5).

Article 7 has been said by lawyers, law professors and even state officials to be unconstitutional. However, in the Ministry of Justice, we were told that in 1964 the Korean constitutional court voted that a similar provision contained in the anti-communist law was constitutional, and therefore article 7 would be considered officially to be constitutional also.

This is not a convincing argument. While it is true that the wording of article 7 is similar to that in the anti-communist law, nevertheless, as was

* There is no crime nor punishment except in accordance with law.

pointed out to the Mission by several practitioners as well as by leading scholars in the field of constitutional law, the voting on the anti-communist law cannot be applied wholesale to article 7 of the National Security Act. The court decision clearly expresses the view that the court's opinion was mainly based on the specific situation in the country at that time. The facts to which the court refers to back its decision no longer exist today.

The Mission therefore expressed the opinion to all members of the government and the ruling party to whom it talked, that the National Security Act should be repealed or at least revised in order to prevent the impression that it exists merely as an instrument for the government to use at its discretion to oppress opposition.

Articles 10 and 11 are equally disputed. They punish "a person, who, having knowledge of the person who has committed one of the crimes as set forth in Articles 3 to 9, has failed to inform an investigation or intelligence agency thereof", and "a public official whose duty is criminal investigation [and who] has deserted his duty with the knowledge that a person under investigation has committed the crime prescribed in this Act."

These articles are declared to be especially effective, and are allied in articles 21 and 22 to a system of rewards that seems to aim at inspiring denunciation. They reward "any person who has informed an investigation or intelligence agency of a person who has committed any crime stipulated in this Act." They also provide for this 'prize money' to be given on the arrest of a person who has committed any crime stipulated in the Act even where the offender has been killed or been "forced... to commit suicide" while resisting arrest. A scheme of awarding half the value of confiscated goods is also provided for.

These provisions help put in context the statement of Kang Min Chang, Chief of National Police Headquarters on 19 January 1987, that the death of the student Park Chong Chol, while being tortured by two policemen, "resulted from the 'excessive zeal' of some members [of the police] in carrying out their duties" (*The Korea Tribune*, 20 January 1987).

Torture and Other Physical Maltreatment

Leading scholars have singled out three main factors that may explain the presence of torture practices in Korea. First, violence against suspects was used by the Japanese colonial power and this 'tradition' was carried on by the police

of the independent Korea. Second, anti-communist ideology, a consequence of the Korea war, is used by the government as an instrument to secure its power. There is widespread indoctrination both with anti-communist ideology and, as the Mission itself experienced when talking to one of the government officials it met, with the idea that torture is necessary to fight communism effectively. The danger of such indoctrination is exacerbated by the fact that those struggling for more democracy and greater respect for human rights are labelled as communists and, therefore, it is felt that torture is justified against them.

The third factor is the strong military influence on all aspects of daily life. This leads to negative consequences, especially for the protection of human rights and influences the police as well as the prosecution and the judges. In addition, 20 years of military dictatorship, has caused an 'undemocratisation' and a political immaturity, especially within those groups following the government line without any critical observation (see Kim Il Su, Causes of and Methods to Eliminate Torture).

The Mission received information about torture and other physical maltreatment from persons who themselves had been maltreated, from their relatives, from defence counsel and to a very small extent from admissions made by the officials to whom the Mission spoke. According to this information, and despite denials from the official side, cases of torture and physical maltreatment seem to be not the 'very rare exception' but in fact quite usual and practised at least with the silent toleration of high ranking officers in the government. For instance, the fact that several interrogation rooms have a bathtub appears to support the accusation that water torture is used systematically by some sections of the investigating police.

A common method of torture seems to be the "water treatment", in which the victim's head is held so long under water that he feels he is going to drown. Another method is the "roasted chicken" technique, in which the victim's hands and feet are tied together and a stick is put in between them with which he is hung up and then turned around. Use of electric prods, deprivation of sleep and food are also reported. In many cases these techniques were accompanied with threats of more severe torture, such as sexual torture, electro-shocks and death.

There is reliable evidence that until January 1987, about nine out of every ten persons detained by the police for politically motivated activities were beaten. Although these violations of human rights could be said to be within the colonial tradition, being also meted out to suspects arrested for non-political activities, the Mission is convinced that Korean society is now no longer willing to accept these limitations and violations of personal integrity.

Since the killing of the student Park Chong Chol on 14 January 1987, it has been reported that the torture and maltreatment of non-convicted persons detained for political activities have almost disappeared. However, all those with experience of the previous situation believed at least up to the middle of April 1987, that this change would not be permanent.

Another change due to the killing of Park Chong Chol is that, while before this case almost nobody in court was allowed to speak about their tortures, since then, judges have occasionally permitted defendants to report on how they had been treated and sometimes even to call in the alleged torturers to testify. However, many of the persons who have undergone such treatment, find themselves not able or willing to talk about it in detail. The reasons for this silence were explained to us as being national pride as well as the individual's fear of losing face by admitting how his personal dignity had been violated and how his value as a human being had been denied. For instance, in one of the trials the Mission attended, a female student declared that she could not even talk to her mother about the specific way she had been treated. The traditionally weak social position of women in Korean society seemed to have an especially strong effect in silencing those women who had been maltreated. However, there have also been cases of men in high social positions speaking openly about the torture that other persons had received, but refusing to give details about how they themselves had been maltreated. It has to be mentioned in this context, that in general such persons are less often and not so heavily tortured as for instance students and workers.

The official attitude we were confronted with was that there may be some occasional brutality, but the government use all possible means to prevent it. The death by torture of the student Park was presented as the first incident of its kind and an isolated event. This statement by the Ministry of Justice can easily be challenged, as in 1983 a policeman was sentenced to nearly four years imprisonment for killing a person by torturing him.

In addition, the number of deaths in custody that have been held to have been 'accidental' would seem to indicate that violence against detainees is not such a rare occurrence and has in fact, been carried out with the silent toleration of high-ranking officials. This is reinforced by the fact that several detainees mentioned that investigating police had told them that it would be useless to complain about the treatment meted out to them.

Attempts were made by officials to find a justification, or at least an excuse for, torture and other violations of human rights. One official we met compared the present situation with that at the time when North and South Korea were at war and a foreign soldier was caught behind the lines after placing a bomb in a place which he was not willing to disclose. He argued that torture

in such situations could be an effective means of eliminating the danger. The second argument, equally unconvincing, was that torture as well as all other violations of human rights can only be seen in context, so the individual case cannot be judged alone. He could not be convinced that basic human rights must be approached from the micro-viewpoint and be guaranteed on an individual basis. It is for the state to provide such guarantees and the state that fails to do so abuses its power (see Kim Il Su, *Law and Ethics with Regard to Mass-Detention of Students*, Korea University News, 1987).

In addition, it was mentioned that several commissions for the protection of human rights have been set up; none of them, however, has taken any concrete measures to prevent further brutalities. The fact that at least four of them were established by the government or the ruling party, is silent testimony to the allegation by human rights activists in South Korea, that in addition to the Park case, there have been grave violations of human rights on a broad scale, with the toleration of state officials, or at least without any valid attempt on their part to prevent such violations.

The following three cases for which the most information could be obtained, will be discussed in detail. Several other cases will be summarized later.

The case of Park Chong Chol

Park Chong Chol, born in 1964, was a student majoring in linguistics at Seoul National University. He was arrested for the first time in May 1985, and detained for five days due to his participation in a street demonstration. In April 1986 he was arrested for the second time after he had again participated in a street demonstration. After three months he was released with a suspended sentence.

On 13 or 14 January 1987, he was taken from his house by the national police and brought to the anti-communist centre of the National Police Headquarters. The police questioned him on suspicion of providing shelter to a student activist wanted by the police. On 14 January, a doctor was called from the nearby hospital and testified that Park Chong Chol was dead.

The official press release issued on 15 January by a police spokesman said "there was never any torture involved," and that Park died of "shock." It was further stated, that Park had suddenly screamed and collapsed, that he was immediately taken to the hospital, and that he was pronounced dead around noon.

At the same press conference the prosecutor's office declared that it would

nevertheless investigate the cause of Park's death from every possible angle (*The Korea Herald*, 16 January 1987).

However, the prosecution then turned the investigation over to the police, a move which raised doubts as to its objectivity and was not liable to inspire confidence in the eventual findings.

For example, the first report of the police stated, that Dr. Hwang Chok Chun, a physician at Hanyang University hospital, lead the autopsy. However, according to other information he is an official at the National Scientific Investigation Centre which is under the supervision of the national police chief. Before his autopsy, he had a lengthy interview with the 5th deputy director and the 3rd deputy director in charge of the anti-communist investigations at the National Police Headquarters. One of the doctors called to participate in the autopsy declared later, that he was an anaesthetist and ever since his studies in pathology had never participated in an autopsy and that "I was just present at the place on the request of the prosecution".

There were other grounds for misgivings, notably the fact that Park's body was cremated immediately after the *post mortem*, with no chance given to his relatives to arrange for an independent examination and with only Park's uncle having the opportunity to see the body.

There were numerous calls for a full investigation of the incident and the New Democratic Party called on 17 January for a special meeting of the national assembly. An initial *post mortem* report was then released stating that Park had not died of natural causes. In addition, Park's uncle stated that his nephew's body had bruises on the head and left hand; this was confirmed by a prosecutor on 17 January.

The prosecutor's office then declared that it would itself start a full-fledged investigation into the case with a special team headed by the director or assistant director of the Seoul district prosecutor's office.

With the growing pressure and the threat of a new investigation by the prosecutor's office, the police authorities finally made a statement admitting that Park's death had been caused by physical assault on the part of the police officers who were interrogating him about the whereabouts of an activist from Seoul National University whom they wanted to question. Kang Min Chang, Director-General of the National Police Headquarters, who issued the statement, said Park's neck had been compressed against the edge of a tub of water as the police officers were attempting to force his head under the water in order to extract information from him. He stated that a 16-man team had interrogated the two officers responsible for two days, that the officers had been arrested and that their superior, who was in charge of the anti-communist investigation corp, had been relieved of his duties. Kang apologised for the

"unfortunate incident" and asked "pardon" from Park's family and from the Korean people on behalf of all policemen. He also, however, referred to Park's death as having resulted from the "excessive zeal" of some members of the police force in carrying out their duties (*Korea Tribune*, 20 January 1987).

This admission of police responsibility provoked a general and intense reaction: the Minister of Home Affairs and the Director of the National Police Headquarters were replaced; a statement condemning torture was issued by the Korean Federal Bar Association and another by 47 religious and opposition groups; there were national protests against torture, calling for those responsible to be punished; the national assembly held a three-day special session focussing on Park's death; memorial services were held for Park among which was one in Myongdong Cathedral presided over by Cardinal Kim Soo Hwan and partly blocked by hundreds of riot police; Park was the subject of a programme of the Christian Broadcasting Service which was interrupted due to pressure from the government; and the Korean Federal Bar Association held a public hearing on police torture with victims and others who described their treatment and how interrogation rooms at National Police Headquarters were equipped with bath-tubs which, they said, were obviously not there "to allow suspects to take baths."

Preparations for a nation-wide memorial service on 7 February prompted the police to react by putting 20 key figures in the democratic movement under house arrest and tailing several others. This was followed by checks, searches and arrests of people carrying anti-government leaflets.

The service itself was disrupted by massive police interventions leading to several clashes between participants and riot police.

The members of the Mission are of the opinion that the whole truth of Park's death has not been revealed. There are doubts as to the number of policemen involved, the precise nature of the injuries and how these were inflicted. There is also doubt as to exactly how long Park was in police custody and how he received such severe bruising supposedly at the time of his arrest. It has been suggested that this bruising was in fact inflicted during interrogation in order to extract information from Park. The Mission was disturbed by the fact that the equipment used for "water torture" seems to have been part of the "normal" furnishing of interrogation rooms and visible to any visitor to these rooms. It is hard to understand why, if such treatment was officially condemned, no one, including higher police officers, questioned the function of such equipment.

The lack of an independent observer at the *post mortem*, the failure to provide the family with the possibility of conducting their own independent examination, the hasty cremation which did not allow the family time to view

the body and the lack of a full and independent investigation of the case, all point to the conclusion that the police were concealing more than they revealed.

[Ed. Shortly before this report was published five police officers were sentenced to between five and 15 years imprisonment for torturing Park Chong Chol to death.]

The case of Miss Kwon

This was the first case in recent times in which the victim's claim that she had been severely tortured sexually by the police at least led to a formal and extensive investigation by the prosecution.

Miss Kwon was a senior student of Seoul National University. On 4 June 1986, she was taken to the room in Puchon police station in which public security offences were investigated.

The Mission received the following account of her interrogation at the police station:

Miss Kwon said she was subjected to lengthy periods of interrogation concerning persons wanted in relation to a demonstration at Inshon.

On 6 June, at 4 a.m., she was told that she had not been cooperative enough and the investigation was turned over to police officer Mun Kwi Ton.

Miss Kwon claimed that she was at first threatened with sexual abuse. Subsequently, Mun called in a second policeman and they forced her to start undressing. Miss Kwon was extremely frightened and gave Mun the name of one of the persons the police were looking for. Mun made her write down the name and whereabouts of this person at which point she was taken back to the room where she had already spent two nights.

The next day, 7 June, according to Miss Kwon, she was brought into a room with ten police officers who accused her of lying, slapped her face and threatened her. When taking her to the custody room again, Mun threatened to punish her that night for her lies.

She said that she was taken to an interrogation room at 9 p.m. by Mun. Most of the staff had already left the office and the lights were turned off, the room being illuminated only by an outside light. Mun called two other detectives into the room who handcuffed her wrists behind her back. Complaining that he had to stay over the weekend, he forced her to kneel down with a stick inserted behind her knees. While interrogating her as to the where-

abouts of certain wanted persons he stood on her thighs and other parts of her body. When she screamed, he threatened to kill her if she continued. When Miss Kwon told him that she could not disclose the facts he wanted, he dismissed his colleagues and took her to his own room, where he carried out torture of an increasingly sexual nature culminating in rape. Mun interrupted sexual intercourse several times in order to continue the investigation, during which Miss Kwon finally disclosed a second name and the company where that person worked.

Miss Kwon said that after the investigation Mun dressed her and took her to the prison building where he declared that the general inspection (prescribed when a person enters the prison), including a careful body search, would not be necessary, since he had already made the check. Such a search would have uncovered traces of the rape as Miss Kwon had not been able to wash. He asked that she be given a single room where she stayed for ten days until she was turned over to the prosecution.

While in solitary confinement, Miss Kwon claimed that she regularly had nightmares and planned to commit suicide. She finally disclosed her torture to other inmates. More than 70 of them went on hunger strike with her from 28 June till 2 July in protest against the tortures she had described. At the same time she disclosed her experience to a defence lawyer and was interviewed twice by lawyers. Following these interviews she filed with the prosecution a petition complaining against the police, and a group of nine lawyers signed and lodged with the prosecution on 5 July a seven-page document expressing their concern about human rights violations in police detention and describing in detail the treatment Miss Kwon claimed to have received as summarised above. They drew attention especially to the fact that the sexual torture, as described, was not due to the uncontrolled sex drive of an individual, but rather appeared as "a systematically executed crime of deliberate sex torture, planned by senior police officers."

Rape is punishable according to Article 297 of the Korean criminal code. However, it can be prosecuted only on the demand of the victim (Article 306, Criminal code). The lawyers therefore had to limit themselves to acts which they defined as violent and cruel, committed by persons who were legally in charge of persons in custody. They emphasized in this context their serious concern about this special case, which went beyond the "conventional torture or brutality we have often seen." They described the experience of Miss Kwon as "a crime committed by means of immoral sex torture for the purpose of destroying the humanity of a woman and the brutal crime was committed not in order to investigate the charge against Miss Kwon but simply for the purpose of arresting other wanted persons."

They also recalled in this context "the incident in which a female student of Kyunghea University was the victim of sexual violence committed by combat police at Chungryangri police station on 4 September 1984," and that they had been told by families of suspected persons that "their daughters were victimized by torture similar to that used in Miss Kwon's case." They stated that after comparing these cases to Miss Kwon's case, they were convinced that these accusations were also true and "that sex has been systematically abused as a means of torture in certain police stations."

As opposition groups and women's organisations demanded a full investigation and punishment of those responsible, the case received great publicity.

The prosecution investigated the case after Miss Kwon had filed her petition. According to an official statement on 16 July 1986, Mun was dismissed as a result of the investigation because he was held responsible for "verbal and physical abuse" of Miss Kwon. However, the prosecution declared that it decided not to prosecute Mun in view of his faithful service in the police department for more than 13 years and because he deeply repented his behaviour. They even stated that Miss Kwon would not be prosecuted for defamation, because some parts of her allegations would have been found true.

The prosecution statement said that Mun had forced Miss Kwon to take off her jacket and had punched her breasts, and that the questioning served its purpose by her disclosing the whereabouts of wanted persons. The statement said that the prosecution could not support Miss Kwon's claim of sexual assault, since beating a woman's breasts cannot be considered a sexual assault.

The prosecution supported its statement by saying that the room had windows on two sides with plain glass and that police officers using the interrogation rooms just next door at the time had their doors open and walked back and forth in front of Mun's room without hearing, seeing or sensing any act of sexual abuse. However, the assault and rape were said to have taken place in a closed room late on Saturday night when most staff members had gone, the lights were turned off in the room, despite the windows it was not possible to see into the room from the outside, and the door was locked from the inside.

The prosecution dismissed as "groundless" an accusation that Mun's superiors instructed him to commit brutal acts against Miss Kwon. Nevertheless, two of his superiors were dismissed after being held responsible for the "alleged sexual abuses" of Miss Kwon.

On the same day as the prosecution announced the results of its investigation, it made public a report in which "investigating authorities" declared

that the allegations of Miss Kwon were groundless and only fabricated to help fan anti-government sentiment. It was pointed out that her claim, as in general all such allegations, was part of the communist strategy described in Lenin's book "From what should we start?" (1901) and used by some North Korean spies in 1983. Now, they claimed, it had been picked up by fanatical followers of the radical progressive left in order to obtain their own goals.

The nine lawyers supporting Miss Kwon, commented publicly on this report saying that, contrary to what was now being said, an intensive investigation by the prosecution had been carried out with extraordinary sincerity and had found overwhelming evidence proving that Miss Kwon's assertion of sex torture was a fact and could no longer be doubted. The lawyers asserted that the fact that the prosecution's published report did not reflect the conclusions of the prosecutor's investigation was the result of "outside intervention" which suppressed the prosecutor's independent investigation and made the prosecution distort and conceal many of the facts they had painstakingly collected. This was done in order that the prosecution's published report coincided with the "analysis" of the "public security authorities."

Besides this, the lawyers referred to six points on which they based their opinion that the sex torture alleged by Miss Kwon was true and could no longer be doubted. These included that Mun and two of his colleagues, detectives Lee and Kim, made numerous statements about the interrogation sessions, such as their number, their times and the presence or otherwise of other detectives, which were later shown to be false. When Mun's statement that he was absent from the police station on the evening of 6 June was proved to be untrue, he confessed that he had interrogated Miss Kwon three times that evening and on the last occasion without the presence of any other detective.

Following this, the lawyers claimed that Detective Lee finally admitted that he was present when Mun fumbled with Miss Kwon's breasts, pulled down the zip of her trousers and forced her to start undressing. Detective Kim was also said to have admitted that on the night of 7 June he was ordered to bring handcuffs to Mun and that he saw Miss Kwon kneeling in front of Mun who was sitting in a chair. He further testified that Mun took Miss Kwon alone to an investigation room and locked the door. It was dark in the room and he heard Miss Kwon scream. Moreover, another woman prisoner told the prosecution that she had heard Miss Kwon say she had suffered sexual torture, but no reference was made to this in the prosecution report.

After collecting all available evidence including conducting interviews with persons who received their information directly from Miss Kwon and from the files of the investigation by the prosecution, the Mission came to the following conclusions:

- The prosecution's report is in itself contradictory and therefore not convincing.
- The statement of the lawyers as well as the petition of Miss Kwon describe not only the surrounding facts but also details of the sexual torture in a consistent and persuasive way.
- The Mission does not understand why no indictment was issued against Mun, even if he was "a faithful servant in the police department for more than 13 years."

The fact that it was not is strong evidence that the prosecution either has tolerated sexual torture or that the government has put pressure on the prosecution to dismiss the case.

The Mission was disturbed by the fact that the prosecution did not refer to and therefore presumably found nothing unusual in the fact that Miss Kwon was handcuffed with her hands behind her back. This is a grave abuse of power. Investigators using such methods ought to be punished.

Handcuffing itself is unusual even when men are interrogated and is even more unusual when practised as it was in this case. It would seem to be designed to intimidate the women concerned and facilitate a sexual attack by the investigators.

The suspicion of the lawyers that there was interference from the outside to distort the results of the prosecution's investigation, is shared by the Mission. It appears to be the only convincing explanation for the fact that the fact-finding by the prosecution does not correspond with its official announcement.

How strongly the opinion of the lawyers is shared by the population, can be judged by the publicity the case had almost one year after Miss Kwon had been tortured. It was widely reported that Miss Kwon declared before the appeal court on 25 February that Park Chon Chul would not have died "if my claim to be sexually tortured had been accepted and if police investigators involved, including Sgt. Mun Kwi Ton, had been punished, and a warning had been properly given to those investigative agencies which perpetrate torture practice." She argued in addition that "the judiciary should also be held responsible for Park's death."

The case of the four student editors

During our stay in Seoul, the mission was informed that there was a trial against four student editors of an underground newsletter.

The students were arrested on 18 November 1986 and kept in police custody for 25 days. The indictment claimed they prepared leaflets stating that the USA is an imperialistic country, that Korea is a colony of the USA, that the Korean government is dependent on and an adjunct to the USA whence it derives its power, and that the Korean government violates human rights and democratic principles, both values for which they [the students] were fighting.

The four students, Kim Byung Kyu, Korean University, physics student, Pak Young Sook, Korean University, political science student, Im Song Hee, Ewha University public administration student, and Kim Song Yun, Seoul National University, Korea department, third year, were formally indicted. They all belong to the editorial board of the student newsletter *Ae Kook Hak do*, which is part of the students' struggle group "Ae Too Ryun". The newsletters were not yet published and part of the manuscript was not finished.

During a trial session which the Mission attended on 1 April 1987 at 4 p.m. in Seoul criminal court, Kim declared, when questioned by his defence lawyer Kang Shin Ok, that right from the beginning he had been struck with increasing frequency while being questioned about the newsletter he edited, and especially about the other members of the group and how many were still in hiding. He had been beaten with a 1.5 metre stick. They covered his eyes and put sticks behind his knees beating his legs and thighs while forcing him to kneel down. They also hung him from his bound hands and feet and beat him. They covered his face and head with a cloth and then poured water on him so that he could not breathe, one of the forms of the so-called water torture.

He also declared that he had been psychologically tortured and threatened with deprivation of sleep and electric shocks if he did not cooperate.

Miss Pak then declared, on being questioned by the defence, that she also had been tortured. She was threatened and at one time had seven policemen standing around her interrogating her while continuously pushing her, shaking her head and slapping her cheeks till they swelled. She was told if she did not cooperate that others would come and make her talk. She suffered taunts and insults of a sexual nature and her hair was pulled. She was told that when she disclosed where one of her friends was, she could leave the room.

Since she did not disclose any information, they started beating her with a large stick behind her knees, using water torture and many other tortures that she was ashamed to talk about. She said that some of the treatment to which she was subjected she could not even mention to her mother. Miss Pak was taken to a cell with another woman who already had suffered greatly, having been held in police detention for 25 days.

We attended only this trial session but received information that the other two students indicted on the same charges had been treated in a similar way.

The way the students spoke up in front of the court and answered the questions of the defence was very calm and, as far as the political statements and descriptions of torture were concerned, very firm. The Mission found their testimony convincing.

The students were not interrupted by the presiding judge at all when talking about their tortures and defence counsel was permitted to question them as to any further details which seemed important. The Mission was informed later that this was the first time that students were able to speak freely about their treatment at the hands of the investigating policemen.

General comments

The Mission examined many other cases of torture and heard statements from persons who had been tortured, from their relatives and from their defence lawyers. While not passing judgement on any of these cases individually, the Mission feels able, from the information available to it, to express the following opinion.

Water torture as already described above has been used in police investigations in South Korea for years. It is often used with dirty water and applied to the extent that the victim becomes unconscious.

Beatings with and without sticks and clubs seem to be the normal way of starting an investigation, if the detainee does not cooperate. This is accompanied by threats of further torture, by kicking, water torture, and even electric prodding. Sleep deprivation as well as withdrawal of food or the force-feeding of salt or red pepper without water are sometimes, though more rarely, reported.

The case of Miss Kwon (described above) is the only one in which sexual torture has been described in such a detailed and convincing way. However, several similar cases have been reported where there are reasonable grounds to believe that the claims against policemen are equally true.

In May 1986, the Korean Federal Bar Association published a first report on human rights. A second report was published on 12 February 1987. Both reports come to the conclusion that beatings, kickings, water torture and electric prodding have been regularly used in 1986 and at the beginning of 1987. The report also includes sex torture cases, gives details about them, and outlines a series of unusual deaths connected with police or army investigations.

The reports of the Korean Federal Bar Association are backed partly by the torture report centre of the Seoul District Bar Association, especially with the

regard to the treatment of women.

The fact that, as late as 1986, several torture cases had appeared, especially within the anti-communist units of the national police headquarters, and were being investigated is confirmed by the US government. In his statement of 20 February 1987, US deputy assistant secretary of state for human rights, James Montgomery, briefed foreign reporters on the state department's 1986 human rights report by pointing out: "It is a shame that an investigative agency on torture has to exist in Korea." He continued, "torture has made it extremely difficult for the U.S. to maintain constructive political relations with Korea," and "we have talked about the issue with them both publicly and privately, and torture is a matter of our continued concern since torture itself is something which cannot be tolerated."

The Mission received reports of several cases brought against policemen for their use of torture. It also received a prosecution statement that 16 police officers had been cleared of such charges because of insufficient evidence. The Mission did not have enough information to comment on the substance of these cases but it was disturbed to learn that in certain instances, the police force itself conducted the investigation and subsequently dismissed the charges as unfounded without there being any investigation by the prosecution.

The substance of the two reports of the Korean Federal Bar Association on Human Rights corresponds with the experience of the Human Rights Committee of the National Council of Churches (NCC) and the Korean Catholic Justice and Peace Commission as detailed to the Mission and published in their respective reports.

Arbitrary Arrest and Detention

The existing regulations

Code of Criminal Procedure

Detention for investigation – According to Article 202 of the code of criminal procedure, "in case judicial police officials arrest a suspect, the suspect shall be released if he is not transferred to the public prosecutor within ten days." Article 203 provides: "If a prosecutor arrests a suspect or receives a suspect from a judicial police office, the suspect shall be released within ten days, if a public prosecution is not instituted." Only the detention period by the prose-

cutor can, on the request of the public prosecutor, be extended by a judge from a district court if there is "reasonable cause to continue the investigation." The extension "shall be granted for no longer than ten days and can be given only once."

Summons and detention of the accused – Only after a public prosecution has been instituted formally may a court summon an accused.

If "there is reasonable ground to suspect that he [the accused] has committed a crime" and, in addition, "when he has no fixed dwelling...", or "when there is reasonable ground to suspect that he may destroy evidence...", or "that he may escape," the court may detain the accused according to Article 70 of the code of criminal procedure.

The National Security Act

The National Security Act provides in article 19 that the detention of a suspect under Article 202 of the code of criminal procedure by a judicial police official may on the request of the prosecutor be extended by a judge of a district court, if he "recognizes that there is a valid reason to continue investigation of the crime which falls under Articles 3 to 10" of the National Security Act. The extension can only be granted once.

In Article 19 section 2 of the Act, it is further provided that the detention by the prosecution according to Article 203 of the code of criminal procedure can be prolonged twice by a judge.

Section 3 of the same paragraph prescribes that "the extension of the period stipulated in 1 and 2 shall not exceed ten days." If section 3 is interpreted narrowly, the detention period would be at the most 40 days, including one prolongation by the police and two extensions of not more than a total of 10 days for the detention by the prosecutor.

If this narrow interpretation is accepted, the period of detention possible under the Act is ten days longer than under the code of criminal procedure.

However, in general, section 3 is interpreted widely, *i.e.*, that every extension period is held to amount to a maximum of ten days. This means 20 days by the police (including one prolongation), and, since two prolongations are possible for the prosecution, up to 30 days by the prosecution. Thus detention for 50 days without warrant is possible under the Act, 20 days more than permitted by Articles 202 and 203 of the code of criminal procedure.

Article 18 provides that witnesses of acts in violation of the Act "may be temporarily detained in a nearby police station or another proper place, if necessary", if they have refused to comply with a summons at least twice

without a justifiable reason and after a warrant of detention from a competent judge in a district court has been issued.

In practice, however, very few persons know about these formal prerequisites and even fewer complain successfully if caught and detained by the police.

The Constitution

Article 11 of the constitution permits limitations on personal liberty by detention as provided by law. The regulations in Article 202 and 203 of the code of criminal procedure therefore appear to be constitutional, even though they give the police the opportunity to hold suspects for an unusually long time without any control by a judge or at least by the prosecution. This regulation has been challenged as has the constitutionality of the national security act, especially the provisions of its Article 19 regarding extensions of the period of detention.

When discussing the task of the government's newly installed Special Committee for the Protection of Human Rights, the Mission was informed that a revision of the law of arrest is planned as its first task. However, its chairman, a former chief justice of the Supreme Court, in response to questioning, did not specify a single instance in which the law seemed to him to be defective. This reflects the official attitude of the Minister of Justice, who declared, when questioned in parliament on the killing of the student Park, that the law provides sufficient guarantees for the protection of personal liberty.

The practice

In most of the cases reported to the Mission, anti-communist units of the National Police Headquarters had detained suspects or witnesses. In many of them, the legal requirements vis-à-vis detention were not fulfilled, since the persons were kept in police detention for more than 10 days and quite often even more than 20 days. On 30 January 1987, the New Korea Democratic Party (NKDP) Human Rights Protection Committee published a booklet on 24 torture cases and issued a statement claiming that persons were illegally detained for up to 57 days by investigating agencies.

There is general agreement that almost all brutality and torture occurs during police detention. Therefore detainees eagerly await their transfer to the prosecution.

The number of grave violations of the law and of constitutional guarantees

of personal liberty are frightening. But even worse is the fact that illegal detention is condoned not only by the prosecution, but even by the judiciary. It is no longer surprising that almost all brutalities occur during police investigations in view of the ruling of the Supreme Court of the Republic of Korea in January 1987, that "illegal investigation by police officials is admitted as true, but the prosecution's disposition not to institute a public action against them is recognized as reasonable and justifiable, the grounds being that they committed such a practice out of their marked earnestness for the performance of their duties and in view of the fact that they have made contributions to the State by engaging in intelligence service for a long period of time." Those who support illegal actions in this way are at least morally responsible for their recurrence and for further illegal acts which result from them.

Some typical cases concern:

The treatment of students

The Korea Student Christian Federation announced in a printed leaflet a five-day lecture series at Hang Ning Church on 1, 2, 7, 9 and 10 April 1986.

The police prevented the lecturer for the first day from leaving his house and delivering his speech. When Lee Jae Ho, president of the organization, went to the police to complain, he was asked to join the police to go to a competent police station. Later, it turned out that the police only forced him to stay with them and visit several places in order to prevent him from appearing on time at the church.

Similar deprivation of liberty occurred the next day. The lecturer was visited by the police and not permitted to deliver his lecture. As a "preventive measure", the president of the organization and two others were forced by the police not to leave the place where they were, respectively a coffeehouse and their own houses.

Since two lectures had to be cancelled due to the illegal behaviour of the police, the organization was forced to announce that the rest of the lectures had to be cancelled.

Students are also targets for arrest and detention. A report from Seoul National University, published on 2 February 1987, shows that nearly 7% of all students were taken away by the police at least once in 1986 in connection with campus rallies and anti-government protests. These figures do not include students arrested for other activities.

Of the 1,523 students involved (out of a total of approximately 22,000), 451 were arrested and 11 others booked without actually being detained. Of the others, 151 were referred to summary courts and 910 others set free on

admonition or handed over to school authorities.

The total number of students in the country is more than 1,200,000. It therefore is not surprising that, almost every day, newspapers report students being taken into custody by the police for their activities.

While the number of students arrested at any one time is generally rather small, from three or four up to 25, on 5 February 1987, 1,365 "suspicious" people, mainly students, were taken away by the police for carrying anti-government leaflets. From this group, 65 were charged, 127 referred to the summary courts and the remaining 1,173 were released with admonitions.

These figures cannot be compared with the statistics which the assistant minister of justice supplied to the Mission, because there the total number of suspects is not listed. However, the number of cases cleared by the public prosecutor's offices shows an increase of 190% in 1985, compared with 1970. Therefore it may be assumed that the number of student suspects taken away by the police has similarly increased.

House-arrests

The most famous case of a person being put under house-arrest is that of Mr. Kim Dae Jung. The Mission met with him twice at his house in Seoul where he had been placed under house-arrest for the 53rd time since 1985.

House-arrest is not provided for by the law of South Korea and is therefore an illegal deprivation of liberty, violating Article 11, section 1, of the constitution.

House-arrest is not only used against high ranking political opponents and students in order to keep them away from political activities; it also appears to be used on a broad scale against all persons engaged in activities challenging the *status quo*. For example, on 1 September 1986, a demonstration was held in 20 villages against the importation of tobacco. In order to prevent them from participating, some of the leading farm workers were put under house-arrest and four were sentenced later in a summary court. Similarly, when the abortive Myongdong Cathedral rally was planned by 48 religious and civil rights groups and the NKDP, at least 30 persons (including Kim Dae Jung and Kim Young Sam) were placed under house arrest in order to prevent their participation.

Miscellaneous

Many other cases of the abuse of powers of detention were reported to the Mission, the evidence for which could not be verified in the time available.

However, the figures given to the Mission, including the official figures, give an indication of the extent to which detention is used by the government to fight opposition movements.

The prosecutor general's office announced on 19 February 1987 that the total number of persons detained for political reasons in 1986 was 7,250. Of this total, 4,610 were formally arrested (an increase of 265% over 1985) of whom 3,068 were arrested for involvement in campus turmoil and 666 were charged with violating the National Security Act.

The use of the indiscriminate rounding up of large numbers of people who are then detained for questioning is widely practised. For example, according to the national police chief, 557 people were taken into police custody in connection with the mass for Park Chong Chol and 799 in connection with his memorial rally, of whom 620 were eventually released.

Other examples include 300 persons rounded up during disturbances in Inchon of whom 74 were sentenced and 1,000 persons seized at Konkul University of whom 346 were sentenced.

In addition, the New Korea Democratic Party claims that 238 persons were detained illegally from 1 October 1986 to 15 January 1987 and that a substantial number of persons have been detained for such long periods of time that they have been reported missing until they eventually surfaced when formally placed under arrest.

There are also allegations of other abuses, for example, the report of a NKDP fact-finding committee established on 29 January 1987 comes to the conclusion that in Korean welfare facilities (centres caring for, *inter alia*, indigent and homeless people), forced labour, severe brutalities and even killings are carried out on a large scale. The NKDP Human Rights Protection Committee reports that its members themselves were severely beaten by wardens when they tried to enter one of these facilities. They further were abused for about half an hour by 30 people from the centre. During this time their cameras and tape-recorders were confiscated. Police, who were present at the scene, stood by without trying to stop the violence. The prosecuting authorities have received strong criticism from the press because of their reluctance to handle this case.

The NKDP Committee comes to the conclusion, that in these centres violations of human rights of inmates appear to be quite normal. The inmates, including children, are forced to work more than ten hours a day under strict supervision. In cases of disobedience inmates have been imprisoned in disciplinary cells, where they are severely beaten and illtreated.

The Committee reports further, that according to the results of its investigation, 513 detainees have died during the past ten years in one welfare

facility alone, the figure for last year being as many as 95. The bodies of 65 inmates were handed over to relatives, even though the Committee found out that those persons had been registered as having "no relatives." The investigation also revealed that the "relatives" who took the bodies were in fact not residing at the addresses provided by the facility. The Committee therefore raised the strong suspicion that those bodies might have been sold for profit.

Evaluation

A change in the attitude of the police in the use of detention and in the treatment of detainees is unlikely as long as the Supreme Court continues to rule, even in cases of admitted illegal investigation, that the decision of the prosecution not to institute proceedings against the police officials responsible, is "reasonable and justifiable" as the police officers acted out of "marked earnestness for the performance of their duties" as state officials (*Hankuk Ilbo*, 28 January 1987). It is for the judiciary to ensure that the provisions of article 11, section 5 of the Constitution ("all persons who are arrested or detained shall have the right to request the court to review the legality of the arrest of detention") are carried out in order to avoid police abuse. Several detainees told the Mission that when they asked for the legal order authorising their detention, the police would regularly answer that the National Security Act "is special", the implication being that, according to this law, the police can do what they want.

Treatment of Prisoners

Pre-conviction

Detained persons are mainly treated in the way described above. The responsibility for any brutalities which occur prior to conviction lies not only with the police but also with the prosecution, because article 198-2 of the code of criminal procedure states that:

"(1) The chief prosecutor of the district prosecutor's office or the chief of the branch office must detail a prosecutor to inspect the place where a suspect is detained in the police bureau or police station under the control of such office once or more every month in order to investigate whether illegal detention has been made or not. The inspecting prosecutor must examine and question the detainee

and must examine the documents relating to detention.

(2) The prosecutor must, if there is a valid reason which makes him suspicious that the prisoner has been illegally detained, order transmission of such case immediately to the prosecutor's office."

Former prisoners, family members of prisoners and defence lawyers, with whom the Mission met have reported that they have never experienced or have only heard of such an inspection. The Mission therefore has reasonable ground to believe, that the prosecution does not fulfill the duty assigned to it in the code of criminal procedure. The responsibility for all brutalities and tortures which, as already mentioned above, occur mainly during the period of police detention, therefore does not fall only on those who actually commit these acts. If the prosecution omits the necessary controls, the prosecutor, who is especially assigned for such inspections, the Prosecutor General and the Minister of Justice are equally responsible. The latter both have, according to article 14 of the Public Prosecutor's Office Act, the duty to "superintend the performance by public prosecutors of their duties."

The situation in prison has been described to the Mission as far better than during the detention in police custody. In prison, detained persons were permitted one visit a day and one letter every day (however, only by family members).

On 31 January 1987, the lawyers of seven college students filed a motion to have 13 prison guards prosecuted for committing brutalities against their clients in Yongdungpo prison. They claim that 13 officers and guards committed cruel acts using wooden bars, after they brought the students to underground cells on 11 and 12 April 1986 in order to punish them for causing disturbances inside the prison. The 22 lawyers had already filed a complaint in late April 1986; however, in October the prosecution cleared the officers, not denying the brutalities but arguing that the officers had taken "appropriate" action to maintain discipline and order in the prison. At that time the students were awaiting trial for alleged involvement in anti-government activities.

Post-conviction

The Mission received detailed information about the situation of prisoners serving sentences from representatives of the Council of Families of Political Prisoners for Democracy, family members of such prisoners, defence lawyers, the Korean Catholic Justice and Peace Commission, the NCC and several other organizations, who are concerned about the treatment of prisoners.

After conviction the contact with the outside is limited to one letter and one visit per month. However, every visit can be made by up to three persons, each of them receives five minutes with the prisoner.

The prisoners are permitted to receive books. However, the selection of books that are permitted is rather unpredictable.

Prisoners have up to 30 minutes exercise a day.

Special brutalities or maltreatment of prisoners were only reported concerning prisoners convicted for their political activities in opposing the government (for details, see below).

Differentiation between political and non-political prisoners

The main information the Mission received was on the different treatment for political and non-political prisoners, despite Article 10 of the constitution which declares that "all citizens shall be equal before the law".

Even after conviction political prisoners can be visited only by family members, a new regulation in force since 1979. They can have no physical contact whatsoever with their visitors and cannot even touch hands. Sometimes even direct verbal contact is interrupted and a telephone installed between two small rooms in order to avoid any non-verbal communication.

The differentiation between political and non-political prisoners is the same, before and after sentencing.

The political prisoners are in general separated from other prisoners for daily exercise. Therefore the area available for their exercise is often very limited.

It has also been reported that political prisoners who do not sign a "letter of conscience" declaring that they regret their acts and promise to conform to the policy of the government in the future, will generally be kept in solitary confinement. The cases of Pak Suk Sam and Pak Suk Jul seem to be representative of such isolation, even though Pak Sul Jul was later living in a cell for two persons, because he was sick and somebody had to take care of him.

The situation of political prisoners becomes especially bad if they complain or try to complain. According to the prison regulations, prisoners have the right to put specific demands to the prison governor. But generally, if such demands are made, they will neither be brought to the attention of the prison governor nor will the prisoner be allowed to have an interview with him. If he complains about this delay or the denial of his rights, for instance, by shouting in his cell, he is taken to special "disciplinary" cells, which generally are underground without sufficient air and almost no toilet facilities.

Punishment is also carried out for various other reasons and in different degrees. Sometimes hand-cuffing is used and occasionally a rope is put around a prisoner's arms and chest to prevent him from moving his arms freely. This forces him to eat with his mouth like an animal. For instance, Mr. Yun Jyo Yon was kept under such conditions for seven days in December 1986 in Sudaemon prison, after he had been sentenced for violation of the demonstration law. Prior to his arrest on 3 November 1986, he was secretary general of the Youth Alliance for Democracy. Released on 17 February 1987, he was at the time of our mission hospitalized in Hanyan University Hospital. After his second imprisonment, relatives told the Mission that according to the doctor's diagnosis, his neurosis most probably resulted from tortures he received in 1980 and maltreatment to which he was subjected in prison in December 1986 (he was imprisoned in 1980 for 18 days and tortured after the Kwanju riots). He now is afraid if anybody comes close to him, especially groups of people or tall persons.

Other prisoners, whose names were given to the Mission, claimed to have been treated in similar ways, especially preventing their eating with their hands.

The Mission was also told that on 11 November 1986, all political prisoners in the Shin Myong Shen prison were asked to come forward and line up. They were then beaten in front of the other prisoners without any reason, just to demonstrate the power of the prison guards and the treatment that political prisoners deserve in the view of the prison guards. A hunger strike in order to bring their complaints to the prison governor was unsuccessful.

The Mission has been also informed that in one part of Incheon prison video cameras were installed in every cell as well as tape recorders. Eight political prisoners were moved into those cells and reported the installation of the new equipment. Among those prisoners kept there was the member of parliament and lawyer, Tschang Kee Wuk.

The information received by the Mission indicated that the number of beatings and maltreatment reported from the prisons had decreased since the death of Park Chong Chol, in particular one of the brutalities of the prison guards, namely forcing prisoners' head into the toilet bowl, which was reported in about 50 cases, seems to have disappeared at least during the period after Park's death. Although 50 cases contained complaints about this maltreatment, only 11 were investigated by the prosecution. The Korean Justice and Peace Commission comes to the conclusion that the number of persons treated in this way may be much higher, since prisoners cannot complain to the prison governor without the consent of the prison guard and in general do not get permission to report or complain about such treatment to

the outside at all. Every visit to the prisoners from family members is listened to by prison guards and many of them take notes or write down what is said. For this reason the prisoners do not dare to complain openly to their relatives.

Also reported to the Mission was the beating of three women in March 1986, one of whom tried afterwards to commit suicide, as did another woman after she had been subjected to a body search in June 1986.

Most reports of abuses received by the Mission concerned the Seoul prison centre and the Anyang prison centre.

According to the information of the Korean Justice and Peace Commission, 2,220 sentenced prisoners were involved in protests in 1986/87, during which 318 were seriously injured by the prison guards. In 61 cases of protest, a total of 743 persons were punished.

An additional report recalled about 70 cases of protest which led to 13 charges against prison guards concerning the most serious injuries. For example, on 26 February 1987, 26 family members of Yun Yo Ryon, chief secretary of the Democratic Youth League filed a complaint against Yu Pyong Yol and four other prison officials of the Seoul Detention House for acts of brutality. However, the family members as well as the representatives and lawyers of the prisoners concerned did not believe that those charges would be successful.

There is a widespread fear, mainly among political prisoners, of being beaten up. Even greater is the fear of being transferred from a nearby prison to a remote prison if the prisoner complains "too much". The purpose of such a transfer is to limit or at least complicate the visits of the family. It was reported that complaining and protesting prisoners were transferred from the Ungun prison, which is about one and a half hours from Seoul, to Gingu, which is six or seven hours from Seoul.

The description of the situation and treatment in the prisons is also supported by the fact that on 20 August 1986, three or four members of the NKDP went, with the permission of the Minister of Justice, to investigate a prison and to see some prisoners. However, the prison guards protested, refused to let them enter and in the end were successful: the permission was recalled.

When in Seoul, the Mission received the draft text of a petition designed to draw international attention to the plight of the political prisoners. The draft recalls that the majority of political prisoners have spent one or more periods on hunger-strike, protesting against illegalities and cruelty. According to the draft petition, of over 2,000 political prisoners at the beginning of 1987, about 100 have suffered violence by prison guards. "They have had teeth broken, heads gashed, their whole bodies covered with bruises, many of them suffer-

ing serious injuries. Among these, about 10 persons attempted to commit suicide, by taking poison or cutting an artery with broken glass. In each such case, the families, upon learning of the facts, have held overnight protest sit-ins in front of the prison gates. Such incidents have taken place in Taegul, Konyongdeungpo, Oyongbu, Kangneung, Wonju and Shunj-prison."

It is further reported in the draft petition, that as the people's demands for democratic improvements increased, the number of arrested persons rose and at the same time the oppression of prisoners of conscience became more harsh, to the point that their families believed that their lives were in danger.

The typical Korean attitude is shown when the petition continues by saying that the authors "are ashamed that such things are happening in our country," but strongly urge the world community, to spread the news and request help from those around the world who are concerned about human rights. They strongly urge the world community in these terms: "Please help us so that the inhuman treatment of prisoners of conscience in Korea may not spread, but that it may be stopped," because "only if the various human rights groups around the world know the facts and work together as a community, can human rights violations in Korea be controlled or lessened."

The draft was dated 5 December 1986. However, at the time the Mission visited Seoul the final version was not available.

Arbitrary Search and Seizure

Legal regulations

The conditions for search and seizure are fixed in chapter X of the code of criminal procedure, Articles 106-138. The general rule under the regulations is that only a court can decide whether it is necessary to search and seize.

However, "for the purpose of executing a warrant of arrest, a public prosecutor or judicial police official may enter the dwelling of a person or a premises, building, airplane, vessel or vehicle, to search for the accused" (Article 137 Code of Criminal Procedure).

In cases of urgency a prosecutor or judicial police official may seize, search or inspect without a warrant (Article 217 code of criminal procedure). However, in such cases he must as in cases of urgent arrest, obtain a warrant within 24 hours from the time of the seizure, search or inspection (Article 207). If a judge of the district court is away in another city or town, the time limit is 72 hours.

The rules of criminal procedures (Articles 59 and 60) specify what should be written in a warrant of search and seizure and who should participate in its execution.

The National Security Act does not contain any special provisions on this subject. The articles of the Code of Criminal Procedure therefore contain the only conditions under which search and seizure is legal.

These regulations are consistent with Article 15 of the Constitution, which provides that limitations of the freedom of residence can only be made by "a warrant issued by a judge upon request of a prosecutor". Exceptions in urgent cases like Article 217 of the Code of Criminal Procedure are accepted as falling within these guarantees, as long as the decision of the judge is not unduly delayed. Time limits of 24 and 72 hours do not go beyond the usual period accepted in other countries.

The practice

Search and seizures were mainly reported to the Mission in connection with the confiscation of books, political brochures and leaflets. Consequently, searches were mainly made of the premises of publishing companies or book-stores, but also of organizations opposing the government which printed their own material, especially student organizations. A warrant was not shown or available in all cases. In many of these cases the search and seizure was claimed to be urgent and the necessary documents were supplied later (see Chapter 4, *infra*).

It was noted by the Mission that apart from these cases very few searches and seizures were reported. However, in some cases, large scale searches were reported, especially for preventive purposes.

On 2 February 1987, the prosecution and the police decided to carry out a search and seizure of dissident organizations in order to block their preparations for a "pan-national rally to mourn the death of Park Chong Chol." As an initial step, the police secured a warrant from the court to search the premises of dissident organizations, including the Council for Democratic Press Movement (chairman, Song Kong Ho), the Council of Writers for the Realization of Freedom (chairman, Yi Ho Chol), the Council of Publishers and Writers and the Council for Minjung Cultural Movement.

These warrants were effective for ten days, namely until 12 February. Surprisingly the offence claimed as backing the warrant was the spreading of rumours, punishable only under the Minor Offences Act.

In this context a police official said: "We will carry out search and seizure of the offices of the district chapters of the New Korea Democratic Party (NKDP) if they publish and distribute leaflets in connection with the upcoming rally at the Myongdong Cathedral".

It was reported that from Sunday 5 April in the late evening until early in the morning of 6 April, 19 searches were made in universities in Seoul, including Seoul National, Korea and Yonsei, at student halls and other student related facilities. According to the official announcement the searches were executed by school officials, starting on Sunday at 8 p.m. and aimed at seizing fire-bombs and other articles students could use in campus rallies and demonstrations. However, no such articles were reported found, except for a small number of leaflets at Korea University (*Korea Herald*, 7 April 1987).

In connection with these searches, university circles including members of all groups within the university, as well as lawyers, report that searches are generally carried out under the official guidance of school authorities in the presence of police or even prosecutors. In those cases no warrant is necessary but the result would amount to the same.

University teachers also report, that their rooms in the university as well as their private houses are regularly observed by plain clothes policemen. In addition, they often suspect that during their absence their rooms are searched without their being notified.

Defence lawyers, in the case of the four students mentioned above, said that the material searched for produced no evidence which could support the allegations of the prosecution and the police of contacts with North Korea. In general, they said the only documents seized were ones which the students would in most cases have delivered voluntarily, since the documents would prove their innocence.

Chapter Three

Right to a Fair Trial

The right to a fair trial is understood in this context as a complex right, similar to the guarantees in Article 6 of the European Convention of Human Rights. The Mission could not focus on all aspects of this legal guarantee. The report therefore is limited to the following three main points and a few other aspects.

Independence of Justice

The legal situation

Article 26 of the Constitution gives everybody the right "to be tried in conformity with the law by judges qualified under the Constitution and the law." According to Article 104 of the Constitution "judges shall judge independently according to their conscience and in conformity with the Constitution and law." One of the means of guaranteeing this independence is described in Article 107 section 1 of the Constitution: "no judge shall be removed from his office except by impeachment or criminal punishment, nor shall he be suspended from office, have his salary reduced or suffer any other unfavourable treatment except by disciplinary action."

Limitations to this general guarantee are not provided for in the law of the Republic of Korea.

The practice

The Mission discussed this subject with several people including defence lawyers and state officials. Judges, however, were not available to the Mission, even though we asked to be able to talk to one of them who had especially wide experience in handling political cases.

The government representatives denied any influence on the judiciary and pointed out that according to the law the judges are completely independent. The Mission told those who claimed that the independence of judges is endangered in the Republic of Korea that to its surprise not a single judge had been named to it, who spoke up openly against any interference by the prosecution or the government and who was willing to defend his independence against any such endeavours. Nevertheless lawyers the Mission discussed this with held to their opinion that all judges engaged in trials of political prisoners, as well as prosecutors and also journalists, would be under permanent pressure by the government.

Checking through the political cases already decided, there were few which could be quoted as indicating that independence of justice still exists with regard to political cases in the Republic of South Korea. From all cases reported within the last five years there was only one in which the judge set free a person indicted for opposing the government under the National Security Act, and five or six cases were mentioned where judges gave lesser penalties than those demanded by the prosecution.

The conviction, that the independence of judges is no longer guaranteed is strongly fixed in the mind of many of those engaged in the struggle for a better protection of human rights. For instance Mr. Lee Dong Myong, charged with hiding a leader of an opposition group, was sentenced in March 1987 but refused to appeal explaining, that because of the pressure on the court he did not expect the judges to be independent. Also Miss Kwon withdrew her appeal with the explanation that she did not have confidence in the independence of the judges.

The Mission was told by many defence lawyers as well as by people active in organizations prosecuted by the government, that in private talks judges often agree with the defence lawyers involved in the protection of human rights but do not have the courage to speak up openly to complain about the interference by the government with the judiciary.

A statement by the Korean Catholic Justice and Peace Commission of 26 January 1987, makes serious complaints against the judiciary. It claims that the judiciary has been responsible for convictions based on false confessions. It is further said that the judiciary encourages torture by refusing requests to deny

the admissibility of an alleged confession since it has been obtained by torture. At the same time the statement expressed the hope that the death of Park Chong Chol will mark a turning point also for the judiciary in helping to eradicate torture in the future.

According to some of the persons the Mission talked to, one of the reasons for a lack of judicial independence is the time limit on the term of judges. Judges are generally appointed only by the government, and generally only for a period of ten years instead of to retirement age.

The Mission was told by various sources that the pressure imposed on judges by the government is usually indirect. For example, it was reported that judges refusing to follow the government line might lose certain privileges.

The independence of justice was questioned by the "two Kims", Kim Dae Jung and Kim Young Sam, co-chairmen of the Council for the Promotion of Democracy (CPD). They sent letters to the chief justice and all judges across the country in March 1987, asking for their cooperation in maintaining the independence of the judiciary as well as in trying politically related defendants fairly. Amid a mixed reaction expressed by judges (positive, negative and indifferent) court authorities were reported to have once considered collecting all these letters before they were delivered to the individuals to whom they were addressed. However, the Supreme Court later left the decision in handling the matter to the courts at various levels.

The prosecution is reported to have expressed displeasure and declared it undesirable for politicians to interfere in the affairs of the judiciary, claiming that this letter itself violated the principle of the independence of the judiciary.

Lawyers, however, upheld the right of the two Kims to react in this way, since the trial of politically related offenders had posed the problem. It has even been reported that some judges commented that "It is worth listening to their opinion, although we are not pleased with the way the letters were delivered to us."

Pressure on Prosecutors in Political Cases

Several persons the Mission spoke to expressed their strong conviction that prosecutors are under pressure from the government to handle cases of political opposition in a rather severe way. They claim that prosecutors themselves have said that such "pressure" is used against them.

Article 14 of the Public Prosecutor's Office Act reads as follows:

"The Minister of Justice, in his capacity as supreme superintendent of public prosecutorial functions, shall generally superintend the performance by public prosecutors of their duties, however, in specific cases he shall direct only the Prosecutor General."

According to this regulation the Prosecutor General has the power in every individual case to direct the prosecutor in whatever way he thinks advisable. The only way the prosecutor can maintain his independence is to refuse to carry out the direction if he disagrees with it. However, he then takes the risk of being disciplined or even losing his job.

His position, according to Article 22 of the Public Prosecutor's Office Act, is rather strong. Article 22 reads as follows:

"Public prosecutors shall not be subject to dismissal or suspension from office or to reduction of salary, except in consequence of impeachment, sentence of imprisonment or a more severe punishment or disciplinary action."

However, refusal to obey a specific direction by the Prosecutor General can be disciplined, and is therefore sufficient reason for him to be dismissed, in spite of the guarantees in Article 22.

The conviction that the prosecution is not impartial, but is under pressure by the government exercised in guide-lines, nevertheless prevails without question among all opposition persons with whom the Mission met.

Limitations on the Defence

Legal regulations

Article 11(4) of the Constitution guarantees all persons arrested or detained the right to prompt assistance of a lawyer. This right is elaborated in the code of criminal procedure. Chapter IV of the code provides in Article 30 that not only the accused but also every suspect may appoint a defence lawyer himself or have such an appointment made independently by relatives. According to Article 34 the defence lawyer may have an interview with the accused or suspect "who is placed under physical restraint," and may deliver or receive any documents or any other things...."

The rules of criminal procedure in chapter V, Articles 12-23 describe how defence rights are to be exercised. They are not limited in any way by the constitution, the procedural code or the National Security Act.

Lack of verbal and written communication

Several defence lawyers reported to the Mission that when clients are detained by the police, no contact whatsoever is possible. Even after a formal accusation, the verbal and written communication is very limited. Written communications will be controlled if they come from the defence lawyer. Papers which clients want to deliver to their defence lawyers depend on the discretion of the prison guard. In general, clients are not allowed to receive pencil and paper and therefore are unable to prepare a written statement.

Oral contact is allowed, if at all, only in the presence of a prison guard, who is not only listening, but regularly taking notes. Even if defence lawyers complain to the respective guards about the illegality of this behaviour, they continue more often than they stop taking notes.

Representations to the prison administration that the detainee has the right to and needs pencil and paper to prepare his written statement, are in vain.

The illegality of these limitations on oral and written communication is not questioned, but it is the practice in political cases to ignore the guarantees for a sufficient defence and a fair trial.

No free access to the detainee

Other limitations on defence rights were reported quite frequently up to the death of Park Chong Chol. Almost unanimously the defence lawyers reported that they were not permitted to see their clients during investigation by the police and quite often not even when detained by the prosecution. In the case of Miss Kwon for instance, one of her defence lawyers, Mrs. Lee Tai Young, was even refused permission to meet her in prison immediately before the trial. She therefore had her first opportunity to prepare the defence in communication with Miss Kwon during the trial in court.

Political and other pressures on defence lawyers

Almost unanimously the defence lawyers reported that in 1986 and in the beginning of 1987 they were not permitted to question details about torture or maltreatment and that their demands to collect evidence on these questions were generally rejected. However, the situation improved after the death of Park Chong Chol.

In 1974 for instance, defence lawyers could be arrested simply because of their arguments in court. One such case is still pending in 1987, 12 years later, and this case has been used occasionally to put pressure on other defence lawyers.

It has been reported by people who have been treated in that way that in former times even defence lawyers were beaten when they refused to answer questions of the police. Due to less pressure in recent years, the number of defence lawyers willing to defend human rights cases has increased, but nevertheless amounts to not more than 30 at present.

A "soft" pressure is that courts often tell defence lawyers, or even the defendants themselves, that they will give suspended sentences only if the accused repents.

The general opinion was that the situation has improved since 1980, as questioning by the Korean Central Intelligence Agency for statements made in court, followed up by police detention for some days, has not occurred since then.

Other difficulties

Another complaint of former prisoners and labour union officials was that no fair trial was expected and the defence was extremely difficult, since the laws were frequently changed and amended, especially the National Security Act, the Trade Union Law, the Demonstration Law, and the Labour Organization Control Law. Many of these changes were in between 1980 and 1985 and were believed to be illegal because they were not passed by the procedures laid down in the constitution.

It was also argued that the defence was often extremely difficult since many of the charges were too vague, in some cases merely labeling the suspects as pro-communists. Judges would never reject indictments, even if they were not in due legal form. From experience in other cases the accused would know that the judgement and the indictments were often in identical terms, even if the defence had claimed that the indictment was too vague. Consequently they had no confidence in the independence of justice.

Chapter Four

Political and Civil Rights

The Constitution of the Republic of Korea carries in its chapter on the rights and duties of citizens a provision on freedom of speech, of the press and of assembly and association¹. While for most rights there is always the proviso "except as provided by law," the provisions on freedom of speech, of the press and of assembly and association have none, the only limitation being that neither speech nor the press shall violate the honour or rights of other persons or undermine public morals or social ethics. There are, however, other constitutional limitations, for example, the freedom and rights of citizens may be restricted by law² and the President may temporarily suspend the freedoms and rights of citizens in times of natural calamity or grave financial or economic crisis or of hostilities or similar grave extraordinary circumstances threatening the security of the State.³

At the time of the Mission, there were no existing hostilities or grave extraordinary circumstances – unless the perennial North Korean threat can, as it commonly and conveniently is, be perceived in the eyes of the government as such. Martial law, proclaimed on 17 May 1980 all over the country, was lifted on 17 October 1980. Thus, there exists no reason for considering that freedom of speech and of the press has been temporarily suspended, yet the Mission was confronted with laws which clearly impinge on, and are frequently used to curtail the enjoyment of freedom of speech and of the press, all in the name of national security. One of these laws that is frequently invoked to hamstring the individual and the press is the National Security Act which penalizes any person who forms, organizes, performs the objectives of, supports and receives money or materials from, or benefits through praising, encouraging, or siding, meeting or communicating with, or providing convenience to, anti-

state organizations (associations or groups within the territory of the Republic of Korea or outside it organized for the purpose of assuming a title of the government or disturbing the State). The law is so broad that it can cover even the most innocuous act or remark. The most frequently used provision is Article 7 penalizing praise and encouragement of anti-State organizations. The article states:

"Article 7. (Praise, Encouragement, etc.)

"(1) Any person who has benefited the anti-State organization by way of praising, encouraging, siding with or through other means, the activities of an anti-State organization, its member or a person who had been under instruction from such organization, shall be punished by penal servitude for a term not exceeding 7 years.

"(2) Any person who has benefited the anti-State organization by way of praising, encouraging, or siding with or through other means, the activities of the lines of the communists abroad shall be punished by the same penalty as set forth in paragraph 1.

"(3) Any person who has organized an association which purports to commit the actions as stipulated in paragraphs 1 and 2 or has participated in such an association, shall be punished by penal servitude for not less than 1 year.

"(4) Any person who has, as a member of the association as mentioned in paragraph 3, fabricated or disseminated false facts or transmitted fabricated facts concerning such matters which might cause social disorder shall be punished by penal servitude for not less than 2 years.

"(5) Any person who has, for the purpose of committing the actions as stipulated in paragraphs 1 through 4, produced, imported, duplicated, kept in custody, transported, disseminated, sold or acquired documents, drawings and any other similar means of expression shall be punished by the same penalty as set forth in each paragraph.

"(6) Attempts to commit the crimes as stipulated in paragraphs 1 through 5 shall be punished.

"(7) Preparation or conspiracy to commit the crimes as stipulated in paragraphs 1 through 5 shall be punished by penal servitude for a term not exceeding 5 years."

A prominent lawyer practitioner says that the law has been frequently questioned as being "void for vagueness" and therefore unconstitutional but the courts have not considered the argument and the issue has not been raised before the Supreme Court. The government claims that the law was taken from the Anti-Communist Act which the Supreme Court had previously ruled as

constitutional.

The other law frequently used to curtail individual freedom is the Law on Assembly and Demonstration. While the law prohibits disturbance of and, hence, protects peaceful assemblies and demonstrations, it also prohibits the sponsoring or holding of assemblies or demonstrations designed to attain the purpose of a political party dissolved by the Constitutional Committee,⁴ feared or designed to influence a court trial or to violate laws and regulations on maintenance of public peace and order or to conspicuously cause social unrest, or which are contrary to the basic democratic order prescribed in the Constitution.

The other laws used to restrict freedom of speech, of the press and of assembly and association are the Minor Offences Act, which punishes the spreading of rumours, the Basic Press Law, and the Law of Registrations of Publishing and Printing Companies.

Official statistics report that most political offenders in 1986 were charged with violating the Law on Assembly and Demonstration and that, of those charged, 813 were for involvement in campus disturbances during the first half of the year, another 116 for involvement in opposition rallies. The same government statistics showed that as of October, 207 persons had been charged under or convicted of violating the National Security Law for activities such as speeches or acts deemed "supportive of North Korea."

The Mission sought out the views of officials of the government on the unusual number of people charged. The almost uniform response was that the unique situation of South Korea – obviously referring to the division of the peninsula – the threat of invasion from North Korea and the threat of communism justify the stringent application of their security laws.

The opposition rejects the government position. It argues that the North Korea threat of invasion has been there for more than 30 years, yet it has not happened, and it is only being used as a pretext to suppress free speech and a free press in order to perpetuate the present authoritarian rule.

Freedom of Speech and Opinion

There are many cases of criminal prosecution in South Korea for statements which, even in relatively free countries, would never be considered as transgressions of the criminal law but as an exercise of free speech. An opposition assemblyman is on trial under the National Security Act for distributing in advance to reporters copies of his assembly speech advocating unification of Korea as the national goal rather than anti-communism. A 72-

year-old lady professor narrowly escaped prosecution under the same law but was sentenced to two days in jail for spreading false rumours when she made critical comments about the government. Four students are being tried under the same National Security Act for publishing a newsletter using terms which sounded like words from North Korea. Students were prevented from leaving their houses (a form of house-arrest) for sponsoring a lecture series (see below). One of them was arrested and sentenced to one year imprisonment for preparing a leaflet quoting campus newspaper articles and the suicide note of a student. The details of these cases follow.

Assemblyman Yoo Sung Hwan

"The national policy goal of the country should be unification rather than anti-communism."⁵ This was the text of a prepared speech of Assemblyman Yoo which he was to give in the Assembly and which his office distributed in advance to reporters. For this, Assemblyman Yoo was charged with violating the National Security Act. The government claimed that what Assemblyman Yoo said was an endorsement of unification even under communist rule, a criticism of the government's unification and anti-communist policies, and a violation of Article 7(1) of the National Security Act which penalizes praising, encouraging, or siding with the activities of an anti-State organization.

Members of the National Assembly enjoy immunity for opinions expressed inside the Assembly. But the prosecution argued that Assemblyman Yoo was not immune from criminal charges when he distributed copies of his controversial statement. Defence lawyers contended that Assemblyman Yoo argued for peaceful unification of North and South Korea rather than advocating unification under communist terms.

The Mission asked Ministry of Justice officials what was in the statement of Assemblyman Yoo that endangered national security and they admitted that there was nothing, lamely adding that the matter should be left to the court since it involved an interpretation of the law. The Mission left South Korea before a decision could be rendered in the case but the defence saw no chance of an acquittal "under the present situation."

Professor Lee Co Chung

Professor Lee is 72 years old and a professor of theology. She was one of about 400 professors who were unceremoniously dismissed by the Ministry of

Culture and Information in 1976, although in her case she was asked to write a letter of resignation dictated by the President of Seoul Women's College. She was also among those arrested under Emergency Regulation No. 9 for participation in the signing of the "Declaration for Democratic National Salvation" read at Myongdong Cathedral on 1 March 1976, calling for the release of political prisoners, restoration of basic freedoms, independence of the judiciary and freedom of the press, and an end to political repression. Along with Korea's respected first woman lawyer, Dr. Lee Tai Young, Professor Lee was sentenced to three years imprisonment, three years suspended sentence, and suspension of civil rights.

On 8 March 1987, a rally was held by 21 women's organizations and Professor Lee was invited as keynote speaker. She spoke about the subordination of the economy to Japan, criticized the size of the military organization, and quoted an article that appeared in the *Korean Independent Monitor* (a U.S.-based publication) which published the unpublished result of a poll conducted by a local newspaper, *Kwong Hyang*, showing that 74% of those polled were for direct presidential election in a presidential system and only 26% were for a parliamentary system.

She was summoned twice by the area police, which she ignored. Lawyers advised her not to wait for a third summons, warning her that she would be arrested and handcuffed. So, on 1 April 1987, she presented herself to the police and was taken to the Anti-Communist Bureau. She was accused of violation of the National Security Act and sent to summary court. In court she admitted saying what she said during the 8 March rally and defended her right to say it since there was no emergency rule or martial law. Probably because of her age, the government appeared reluctant to charge her for violation of the National Security Act; she got off with a light sentence of two days for spreading false rumours under the Minor Offences Act. The Mission was earlier scheduled to meet her on 3 April but was not able to because she was serving her sentence.

The four student editors

Four students from three major schools are accused of violating the National Security Act. They are Kim Sung Yun, 20, third year, Seoul National University; Kim Byung Kyu, 24, fourth year, Korea University; Im Song Hee, 23, third year, Ewha Women's University, and Park Yung Sook, 22, fourth year, Korea University. The four belong to a group called "Ae Too Ryun" and are members of the editorial board of the student newsletter *Ae Kook Hak Do* (Patriotic Students). The newsletter contained articles blaming U.S. imperial-

ism for the state of oppression in Korea, using words commonly heard from the North Korean communist jargon. The students are accused of copying North Korean ideology and encouraging the policies of North Korea.

The mission attended one of the trial sessions and heard two of the students testify in their defence. As translated, here are portions culled from their testimonies:

Mr. Kim Byung Kyu

"You ask if I wondered if North Korea might make use of our efforts? I really can't say because here in South Korea we can't find out anything about North Korea. All our textbooks give us a one-sided picture, we believe, but we have no way to have direct contact, so how can we know? In any case, our intent was not in the least to do anything to support North Korea or even write something sympathetic. And I don't believe that what we did creates a problem for national security. Rather, we are much stronger in defending our own country and its rights when we all have a part in the democracy which we are calling for. Our call is not for chaos but for a democratic system that we naturally would want to defend well."

Mr. Park Yung Sook

"Indeed, everyone should have freedom of thought. The National Security Act should not be used to oppress our people or their thoughts. Is it wrong if we and the people in North Korea use the same words? For example, if the sun shines both over North Korea and South Korea, can we not name it 'the sun'? In this kind of situation, then, what should patriotic students be doing today? Don't we have the right to know about our whole people and entire peninsula? What do the people in North Korea think about issues? Yes, I tried to listen to the North Korean radio to find out. I did not do so regularly or to learn certain words to write in my story at all. I am a patriotic student who wants to live correctly and rightly in my own country. I believe many students feel as I do, and this is very normal. I did nothing wrong. I committed no crime."

The student lecture series

Students from the Korea Student Christian Federation announced through printed leaflets the holding of a five-day lecture series at the Hang Ning Church in April 1986. The series was titled "A Grain of Wheat that Drops to the Ground," and subtitled "Social Reality and Direction of Student and Youth." The lectures were on varied subjects: the Christian Movement, for the first day (April 1); Labour, second day (April 2); Peasants, third day (April 7);

Women, Cultural, and Urban Poor and Anti-Pollution Movements, fourth day (April 9); and Education and Press Movements, fifth day (April 10).

On the first and second day of the lectures, Hang Ning Church was barricaded by the police. Lee Jae Ho, President of the Korea Student Christian Federation, went to the police on the first day to protest but he was forcibly taken by the police to four different places and then to his house. On the second day, he and two other students, Park Sung Jun and Kang Won Ton, were prevented by the police from leaving their houses. The lecturers for the first and second day were also prevented from leaving their houses. The Korea Student Christian Federation were eventually forced to cancel the rest of the lectures.

The Mission asked Justice Ministry officials and the Political Affairs Secretary of the Office of the President about the banning of the lecture series. The former professed ignorance of the incident while the latter blamed it on the subtle and vague movements of the communists working through religious groups advocating socialist ideology and proclaiming Che Guevara as their hero, which Korea is not ready for.

The immolation cases leaflet

On 11 August 1986, the Korea Student Christian Federation organized a memorial service commemorating the 100th day after the self-immolation of two students. The Federation prepared posters for the event. The posters contained campus newspaper articles and the suicide note of student Kim See Jin, stating that oppression lies with U.S. imperialism and dictatorship. Cho Young Sik who prepared the posters was arrested and charged with violation of the National Security Act, sentenced to one year imprisonment, and given a suspended sentence of two years, meaning that on good behavior for two years, he would not have to serve the prison term. Mr. Cho has appealed the decision.

The situation in universities and the protest of 800 professors

The Mission discussed the situation at the universities with numerous professors and other lecturers and students from various universities in Seoul and other cities. The discussions were of different character. The majority of professors and lecturers openly admitted that they were strictly controlled by the government and that during lectures people were carefully watching to see

if statements against the government were included. Many of them suspected that this surveillance could extend to telephone tapping, search of their offices, and observing with whom the teachers had contact in their private lives.

Others were rather vague in their statements, saying only that the human rights situation needs to be improved and the democratic process ought to be promoted. Students for instance refused to give any details arguing that they did not want any interference from outside and were able to handle their national problems alone.

Some did not dare to make any specific criticism of the government. In one case, a newly appointed professor, who the Mission had been told was very critical of the government, did not express any dissatisfaction with the present situation. He had after several years of suspension just been reinstated due to a contact with the government. Other people in the university expressed surprise at this since until his new appointment he had been one of the most critical opponents of the government.

During these discussions it was emphasized that letters, especially from foreign countries and to foreign teachers, were regularly opened and checked. Pressure on students would be exercised directly but often also through their parents, urging them to influence their children to avoid political activities against the government.

The unrest and dissatisfaction of the universities with the present situation comes out clearly from two statements made by a large number of professors. The first statement, signed by about 800 professors in spring 1986, has been published in the May issue of the monthly journal *Dongha Ilbo* under the name of Shing Dongha. The second statement dated 2 June 1986, resulted from the strong support the first statement had received and was signed by 265 professors of 23 universities.

In the second statement the professors declare that their statement is based on the responsibility they feel for the establishment of a new government which can truly take into account the various opinions of the people and honestly protect the national interests. It states, "the present regime has not listened to the people's demands, but rather has sought to misinterpret and pervert them to further the narrow interest of the rulers."

The professors comment on and criticize the political situation, the economic situation, the social situation and the campus situation. They strongly protest against various human rights violations, especially torture and threats to life. Out of their feeling that protests against spiritual and physical oppression are justified, they urge the government "not to make the situation any worse, for there will come a time soon when the reaction to oppression can take no other course than violence."

They see the campus situation and the students' protests as a result "of internal and external contradictions accumulated in our way of life since the liberation of Korea." In addition, they contain severe criticisms of university education "which is compelled to produce intellectual technocrats of a colonialist mentality in service of our nation as a mere bulwark of the anti-communistic world power front." "The harder the political oppression, the more furious the protest movements of students... Freedom to criticize should be allowed in our society by loosening the prohibitions dealing with political ideologies. Therefore, we don't accept the political tactical measures which excessively blame radical actions of our students without analysing in depth the reasons for their radicalism. We believe that the renewal of our society is in reality the best remedy for the radicalism."

The professors demanded more independence for the internal affairs of all universities and more respect from the government for the students' protests, especially for those students who sacrifice their lives by self-immolation to draw attention to the need for improvements.

After these statements had been published, some of the professors received anonymous letters demanding they stop this sort of activity if they do not want to get into difficulties in their universities. Some have been called in by the respective deans or presidents and some even by local police stations, but none of them has been expelled. It is thought that the number of protests this time was too large for any open reaction to be made by the government.

However, it was reported to us by several of the signatories that pressure was nevertheless put on those who signed the statements, for instance by refusing passports to go abroad, financial aid, special leave, or demands for additional equipment.

In this context it is noteworthy that already in 1976, 400 professors were dismissed because they refused to sign a letter confirming their willingness to adhere to the government policy. Seventeen of them were then tried and sentenced, especially those who wrote and read the declaration in front of Myongdong. Some of them, for instance Mrs. Lee Yo Tshung, had not been reinstated when the mission was in Seoul.

Both within and outside the universities the two statements were regarded as an expression of the views of the Korean universities. The universities are still rather quiet and represent in this silence the whole Korean situation. But they symbolize also the growing dissatisfaction with the present situation, especially as educated people become more and more aware of the lack of democracy and of respect for human rights, and express their opinions more and more freely.

In addition to the statements of the professors, we were told that there are

reasonable grounds to believe that in some classes student activists who oppose the government receive lower marks because of their political engagement and not because of lack of work. This appears from the reports that quite regularly students who had continuously above average marks as long as their activities were unknown, suddenly receive marks falling from A to C or even D, without any apparent reason other than their political activities.

Altogether the Mission had the impression that the universities are very much aware of the lack of democracy and of the violations of human rights, and are trying to improve the situation. However, the reaction from the government, in particular (in the words of the professors' June 2 declaration) the "increasing blood-shed in the meaningless confrontations between students and police", leads to an unnecessary escalation.

Freedom of the Press

The Basic Press Law was passed for the purpose of protecting the freedom of expression and the right of access to information of the people and of guaranteeing public function of the press concerning the formation of public opinion.⁶ However, critics view its provisions on registration and cancellation of registration of periodicals⁷ as more of a law for the imposition of government censorship than for the protection of the media. For even the press, including the publishers, have not escaped the long reach of the National Security Act.

In 1986, around 40 journalists were imprisoned, three newspapers and four news agencies in Seoul, and a radio station were closed down. The Christian Broadcasting Service (CBS) was allowed to broadcast only church related news. In place of the closed news agencies, the government created the Yun Hap news agency, 90% of the stock of which is government-owned, and permitted only one newspaper to operate for each province. Seoul-based major daily newspapers were prohibited from stationing their reporters in the provinces. Outside Seoul, only news reporting of Yun Hap is allowed as a source of news.

Some six publishers and four bookshop owners have been imprisoned for violation of the National Security Act, with around 50 more charged and given short prison terms for spreading false rumours under the Minor Offences Act. The charges stemmed from publishing and selling books which have been banned by the government.

Government press guidelines

In December 1986 three journalists were arrested without warrants for the publication of an article exposing secret government guidelines to the press. Three journalists, Kim Tae Hong, 44, Shin Hong Bom, 45, and Kim Joo Eun, 32, were subsequently indicted for the publication of an article in the special 6 September 1986 issue of *Mal* (Words) titled "Conspiracy of Power and Press," reporting in detail, daily government guidelines laid down for local newspapers on the reporting of certain news items between 19 October 1985 and 8 August 1986.

Kim Tae Hong is the secretary-general of the Council for Democratic Press Movement (a group formed by journalists who were victims of government crackdown), former president of the Korean Reporters Association, and had been imprisoned before in 1980. Shin Hong Bom is a member of the Council for Democratic Press Movement. Kim Joo Eun is a working journalist of *Hankuk Ilbo*, a Korean language daily newspaper.

According to the Council for Democratic Press Movement, Kim Tae Hong is charged with revealing national secrets and defiling the national dignity; Shin Hong Bom is charged with similar offences and further, with violation of the National Security Act for having in his possession a copy of a book entitled *Creation of Revolutionary Film*, by Ukama Woo Collective, which he borrowed from the library of the National Assembly. Kim Joo Eun is also charged with revealing national secrets under the Criminal Code and violation of the National Security Act for his possession of the books *Realism in our Age* and *History of Class Consciousness*, both written by George Lukac and on sale at ordinary bookstores.

The offending article reported that the government is controlling the press thoroughly with daily instructions as to whether to cover a certain story or not, and as to the content, direction, the size and even the titles of the articles, using directives such as "in small size," "calmly, without excitement," "not in large size," "with emphasis," "with balance", "properly," "no photos," etc. Specifically cited are the following instances of restricted subjects:

- Deliberations in the National Assembly regarding torture cases, suicides through self-immolation in anti-government protests, and farmer's demonstrations which occurred 32 times during the past one year.
- Sex torture of Miss Kwon In Sook by a policeman while she was undergoing interrogation at a police station.
- The U.S. State Department's comment expressing concern about the case of Miss Kwon.

- Making comparisons between South Korea and the Philippine situation.
- The activities of Mr. Kim Dae Jung.

During the Mission's visit to Mr. Kim Dae Jung, the latter was in the middle of a press conference. Asked how there could be press censorship when he was apparently free to meet the press, Mr. Kim stated that what he said which dealt with the internal troubles in the opposition party would undoubtedly find print because the press is allowed to publish news that divides the opposition and portrays it as not fit to govern; however, the press is not allowed to publish news favorable to the opposition, including his picture. Indeed, the Mission monitored the English language newspapers and television but during its whole stay in Korea did not see any picture of Mr. Kim. Instead prominently played up in the newspapers was the rift among leaders of the opposition ending in the bloody incident at the opposition party headquarters on 4 April 1987 when it was forcibly occupied by followers of an opposition assemblyman who was critical of Mr. Kim Dae Jung and Mr. Kim Young Sam.

The government position on the guidelines was expressed to the Mission by Mr. Kim Choong Nam, Secretary for Political Affairs, Office of the President. Mr. Kim said that officials of the different Ministries are concerned about the reports on their activities and have the right to ask the newspapers, through what are called guidelines, why they are reporting them; that demands to change the reports are made only after the first edition⁸ that goes to the rural areas has been printed and released – and this can happen in other countries. Secretary Kim says that any government or ruling party may not be perfect; on the other hand, some people also do not always do the right things and are motivated to attack the government; that while the government is very open to critics, the press – mentioning also the students – has too much freedom viewed from South Korea's different tradition of the rule of law.

The press law

The *Tonga Ilbo*, 2 February 1987, featured the news of a village community paper called the *Hongdong News* which was ordered to discontinue its publication and required to register under the Basic Press Law. However, when the editorial staff of the paper hurriedly prepared the necessary documentation and submitted a formal application for registration, the Ministry of Culture and Information refused it.

The Basic Press Law requires a person who desires to publish a periodical⁹ to first register with the Ministry of Culture and Information.¹⁰ It also empow-

ers the Ministry of Culture and Information to cancel or suspend the registration of a periodical when the registration was secured through fraud or other unfair means, the registered particulars of the periodical are wilfully changed without first registering them, the person who registered the periodical has failed to maintain the necessary standard facilities, the contents of the periodical repeatedly violate the registered purpose of publication and its public responsibility, the publisher becomes disqualified as such, the person who registered receives donations, contributions, and other endowments from foreign sources, and such person fails to adequately maintain the publication.¹¹

The provisions on the registration and cancellation of periodicals have been assailed as virtually playing the role of a government licensing system and, along with provisions on the confiscation of publications¹² and the criminal responsibilities of editors¹³, of actually restricting press freedom. The law enables the government agencies to interfere, directly or indirectly, in the control of the press at their own discretion. And separately from the general provisions, the law gives the right and imposes upon the editors the duty to exclude contents constituting a crime¹⁴, which, taken together with the broad provisions of the National Security Act, further discourages press activities.

It is apparently these virtual licensing features of the Basic Press Law that the government has used to impose its guidelines upon the press and to force it to engage in self-censorship. The press works with the ever present threat of cancellation of registration hanging over it in case of repeated disregard or non-observance of the guidelines.

It is also under the Basic Press Law that major daily newspapers published in Seoul are prohibited from stationing their reporters permanently in the provinces.¹⁵

The Mission is relieved to learn that an application with the Seoul Appellate Court has been filed by a publisher of a quarterly magazine ordered to discontinue its publication questioning the above-quoted provisions as restrictive of the constitutional right to free speech and a free press.

The Mission also finds it encouraging to know for the sake of freedom of speech and of the press that the Minister of Culture and Information has announced the possible review and revision of the Basic Press Law.

The publishers law

Armed with a warrant issued by the court on 12 February 1987, the Seoul District Prosecutor's Office searched the Pulbit Publishing Company in So-

daemun-ku, Seoul, and confiscated a total of 250 copies of ten different books published by the company. The publisher, the editor-in-chief, and six other staff members of the company were taken by the prosecution for questioning in connection with the publishing of such books as *History of Korean Masses*.

On 1 April 1987, the Public Security Department of the Seoul District Public Prosecutor's Office arrested a representative of the Miraesa Publishing Company on charges of violating the National Security Act. He was accused of having published a book entitled *Russian Peasant Revolution* authored by G. Vintken (phonetic). The book says that the "Russian peasant revolution" was carried out under the organization and supervision of the "Bolshevik" party.

The publishers suffer the same problems of censorship as the press, exercised through the registration of publishing companies required under the Law of Registration of Publishing and Printing Companies. Many companies have stopped publishing because of the registration requirement.

Registration of publishing companies may be cancelled for any of the following causes: (1) fake registration; (2) failure to give information required for registration; (3) lack of full disclosure of the officers of the company; (4) illegal publication of periodicals; and (5) publishing pornographic materials.

At least four publishing companies have already had their registrations cancelled for failure to make full disclosure of the officers of the company. A change of ownership and the name of the publishing company without informing the Ministry of Culture and Information is considered a violation for failure to give information required for registration. Registration outside Seoul of a company doing business in Seoul is also a violation of the law. Almost half of those registered outside Seoul actually do business in Seoul. The Ministry of Culture and Information has already issued instructions that those companies which are not accepted for registration in Seoul shall not be accepted for registration outside Seoul. Publishers complain that when a company is closed it cannot be sold because it is not possible to change the name of the company; a change of address is accepted but not a change of owners.

Adding to the publishers' problems, the government has embarked on a programme of banning books of local and foreign authorship containing political theories and ideologies and criticism of the South Korean economic, political, and social structures. Among the books banned are: C. Wright Mills' *Listen Yankee*, about the revolution in Cuba; Mizuda Yo's *Lecture on Social Science*. Also banned are the musical compositions of Kim Min Kee, all the books of Brecht, Edward H. Carr's *What is History*, T. Wohlen's *The Leisured Class*, H. Marcuse's *Reason and Revolution*, Kim Dae Jung's *Letters from Prison*, Park Chan Chong's *Shameful History*, and hundreds of other books listed as well as unlisted.

To enforce the ban, policemen and officials of the Ministry of Culture and Information search bookstores, dissident offices and campuses and confiscate objectionable books. The Ministry has also required the submission of manuscripts of books for approval before printing, which the publishers find expensive and time-consuming. Manuscripts are approved only when publishers accept deletions desired by the government. Permits to print are sometimes withheld for more than the period fixed by law.

In March of 1986, the manuscript of the life history of Park Kwan Hyun, President of Chunnam University, who was arrested in connection with the 1980 uprising, was confiscated. Around 20,000 copies of a pamphlet on the Kwangju incident entitled *Darkness of this Age* were also confiscated. Another 5,000 copies of *Reminiscence* by Kim Hyung Wook were confiscated after printing and the publisher Chung Tung Hee remained on the wanted list of the police for eight months until he was arrested and charged before the summary court with spreading rumours under the Minor Offences Act and sentenced to ten days imprisonment. Likewise 3,000 copies of a book on *Torture and Sexual Torture*, already printed and in the process of binding, were confiscated.

The Council of Korea Publishing and Cultural Movement (Korum) feels that all these government restrictions and action are designed to oppress the publishing and printing establishments.

Miscellaneous

Mr. Lee Gil Jae, Secretary-General of the Korea Christian Action Organization, which publishes a monthly periodical *Minjung Mission* was recently taken in for questioning by the police, later formally arrested, and sentenced to five days in jail for violation of "press regulations"¹⁶ for publishing the case of a school teacher who allegedly committed suicide after she was harassed by United States soldiers.

On 16 March 1987, Sim Hye Kyong, a senior student of journalism at Hanyang University, was referred by the Seoul Songdong Police to a summary trial on charges of spreading rumours under the Minor Offences Act and sentenced to two days in jail. She was accused of having printed 2,500 copies of a university paper containing articles about the sexual torture case of Kwon In Sook and the torture-death case of Park Chong Chol.

Freedom of Assembly

The Law on Assembly and Demonstration seeks to protect assemblies and demonstrations and maintain public peace and order¹⁷. It prohibits the disturbance of a peaceful assembly or demonstration¹⁸. While it requires notice of the holding of an outdoor assembly or demonstration¹⁹ and prohibits the holding thereof at certain hours and places²⁰, the law, however, excludes from its application, *inter alia*, religious services and funeral rites and rituals.²¹

Many prayer meetings and memorial events have been held by church and student organizations to express widespread public outrage over the practice of torture of detainees and to demand its eradication. Some were blocked or forcibly broken up by the police.

Memorial for Park Chong Chol

A memorial service was held on 7 February 1987 at the Myongdong Cathedral to mourn the death of Park Chong Chol, the Seoul National University student who died while undergoing investigation by the National Anti-Communist Investigation Unit of the Security Police based at Nam Young Dong, Seoul.

A few days before, on 2 February 1987, the police tried to block the memorial service by conducting search and seizure operations of four opposition organizations involved in the preparations: the Council for Democratic Press Movement, the Council of Writers for the Realization of Freedom, the Council of Publishers and Writers, and the Council of Minjung Cultural Movement. The police also threatened to carry out search and seizure operations at the offices of the New Korea Democratic Party, which announced its participation in the memorial, if it published or distributed leaflets in connection with the memorial rally at the Myongdong Cathedral.

No permit was required under the law for the memorial rite but the government claimed that the memorial service was an illegal assembly because the Myongdong Cathedral had not allowed the use of its compound for the event. On 4 February, Myongdong Cathedral issued a statement that it had allowed the use of its building for the event.

On 5 February, the police arrested two Catholic priests and three Catholic school students and charged them with having in their possession leaflets bearing the picture of Park Chong Chol. Another student was also arrested for putting up a poster which read "Let's crush the cabinet responsibility system"

and "Down with military dictatorship" at the door of the Kyungbuk National University library in Taegu.

The police also mobilised over 70,000 police officers all over the country to foil the memorial service rally for Park Chong Chol.

The memorial service took its toll in mass arrests.

The *Hankuk Ilbo* newspaper reported in its 8 February issue that the Director General of the National Police Headquarters disclosed in a post-rally press conference that rallies were held at 13 churches and Buddhist temples, including the Myongdong Cathedral, and at 40 district chapters of the New Korea Democratic Party (NKDP) across the country; that a total of 799 persons identified as leaders of the "unlawful assemblies" were taken away for questioning by the police: 475 in Seoul, 181 in Pusan, 102 in South Cholla Province, 17 in South Kyongsang Province, 12 in Kangwon Province, 10 in North Cholla Province and 2 in Taegu.

Other cases

On 22 February 1987, members of eight Protestant Organizations, including the Council of Clergymen for the Realization of Peace and Justice and the Korean Christian Youth Council tried to hold a prayer meeting for Park Chong Chol at the Cheil Church in Ojang-dong, Seoul, but the meeting was obstructed when more than 1,200 policemen were deployed around the meeting place and blocked churchgoers and students from entering the area.

Another memorial service scheduled to be held at the Chogyesa Temple in Seoul on 3 March 1987 was moved to another place due to harassment and pressure by the authorities.

References

- 1) Article 20.
- 2) Article 35.
- 3) Article 51, paragraphs 1 et 2.
- 4) A constitutional body empowered to dissolve political parties.
- 5) One of Yoo's lawyers says that the essence of what Assemblyman Yoo said was actually that "the national goal of the country is unification and everything revolves on this."
- 6) Article 1.

- 7) Article 20 and 24.
- 8) Article 26 of the Basic Press Law requires the submission of two specimen copies of periodicals to be published to the Ministry of Culture and Information without delay.
- 9) The term "periodicals" means newspapers, news service or other publication issued continuously and more than two times a year. (Article 5(2), Basic Press Law).
- 10) Article 20.
- 11) Article 24.
- 12) Article 7.
- 13) Article 53.
- 14) Article 22(4).
- 15) This was obviously done under Article 12 prohibiting ownership by a juridical person of both newspaper and news service business.
- 16) This was the information given to the Mission. The prosecution and conviction was probably for spreading false rumours under the Minor Offences Act.
- 17) Article 1.
- 18) Article 2.
- 19) Article 4.
- 20) Articles 6 and 7.
- 21) Article 9.

Chapter Five

Economic and Social Rights

Korean citizens are assured by their constitution of dignity and value as human beings and of the right to pursue happiness.¹ All citizens shall be equal before the law and there shall be no discrimination in all fields of political, economic, social or cultural life on account of sex, religion or social status.² All citizens shall have the right to work and the State shall endeavour to promote the employment of workers and to guarantee optimum wages through social and economic means.³ Standards of working conditions shall be determined by law in such a way as to guarantee human dignity.⁴

These constitutional provisions put stress on the right of individuals, especially those from the poor and underprivileged social groups, to work for the improvement of their economic and social status and to participate in the development process.

South Korea has been reported as having achieved one of the world's highest economic growth rates. For 1986 the Korean economy grew 12.5%.⁵

The economic growth, according to a statement of university professors, was achieved mainly at the cost of farmers, labourers, and the urban poor.

The progress has been marked by repression of labour, demolition of houses, suicides committed by farmers and demonstrations by farmers occurring 32 times over the past one-year period over economic issues.

Urban Poor Resettlement

Twenty years ago, immediately following the Korean War, there were many squatter areas in Seoul. When President Park Chung Hee came to power,

he ordered some of those areas cleared and the people affected moved beyond city limits to give way to the modernization plan of Seoul. The squatters moved to areas outside the city, at the time, and built their houses there. Some of them eventually returned to Seoul and rented their houses out. The residents are being asked to move again.

The following summarises the information in four particular cases:

In **Sang Gae Dong**, the government started the demolition of houses being rented by around 128 families. The renters have resisted and have tried to block the eviction. On 12 October 1986, the demolition squad, in the presence of riot police, came to tear down the houses. They dragged a young man away and beat him up. They snatched a six-year old girl from her mother's hand, and the woman was hysterical until her child was found crying 500 metres away from the demolition area. They beat, pushed and knocked down scores of people, including an 80-year old man, three people had broken legs and three suffered lesser injuries. On 13 October, the demolition team smashed large earthen-ware jars containing condiments for Korean food, like kim chi, soy-bean sauce, soybean paste, and red pepper paste. On 24 October, the team and the riot police forcefully confiscated three very battered tents being used for masses and prayers, and as shelter to four families whose houses had been badly damaged. The inhabitants decided to stay until a settlement is made or until all the homes are completely demolished and the people are chased away.

In **Yang Pyeung Dong**, a demolition team and 100 members of the riot police came on 29 November 1986 and demolished 26 houses. The demolition was due to the expansion of the Kyeong Ihn highway. The inhabitants fought the demolition team and the police, throwing stones, sticks, waste, and hot water, with two people putting oil on their bodies and threatening to burn themselves.

In **Sin Dang Dong**, demolition was also conducted by 1,000 policemen and district officials. The inhabitants refused to give up and have lived in tents. Two people attempted to burn themselves during the demolition but were stopped by firemen. A student was badly beaten up by the police and remained unconscious in the hospital.

In **Shillim Dong**, the residents are being asked to move to give way to the construction of high-rise apartments. Although they have been given written documents giving them preference to apply for a dwelling unit, there are a number of problems confronting the residents. In particular, those who are not

owners but merely renters have not been assured of being given moving expenses; the present homes are to be demolished and so renter families would be left homeless during the period of construction of the high-rise apartments; and the apartments might be priced beyond the reach of the residents.

The Farmers

The concentration on economic growth has resulted in a rising trade surplus with South Korea's trading partners. To curb this imbalance, for fear of trade sanctions being taken against South Korea, the government has opened up its market to foreign goods as part of an import liberalization scheme. The massive importation of farm and livestock products has resulted in the depression of prices, especially of grains and livestock, which has led, in turn, to the inability of the farmers to pay their loans.

Through protest actions, rallies and demonstrations, and hunger strikes, the farmers have asked the government for their debts to be written off. Some farmers have committed suicide because of inability to pay their debts.

- On 19 April 1986, farmers of the township of Mu Ahn held a rally protesting the importation of American goods under the government's open-door policy. A protester was arrested, convicted, and released on probation.
- On 17 May 1986, farmers of Ham Pyeong held a demonstration to commemorate the Kwangju incident and to protest the import liberalization policy of the government. Three demonstrators were arrested and released under probation, and another three received summary sentences. Thirty other participants were taken to police stations and held for two to three days without charges.
- On 1 September 1986, farmers' demonstrations were held in 20 villages, protesting the importation of American cigarettes. The demonstrations were met with police brutalities and four demonstrators were arrested and given summary sentences.
- On 29 and 30 December 1986, farmers again demonstrated for two days to protest about rising prices and over the report in the newspapers that ten farmers had committed suicide due to difficulties in paying their debts, and to demand the condonation of the farmers' debts. Seven of the farmers staged a hunger strike.
- On 13 March 1986, a farmer was reported to have committed suicide. The farmer was breeding cattle. When his cattle were ready for selling, the

government imported cattle and the price of cattle abruptly dropped. The farmer committed suicide in protest at the government action.

- In January 1986, some 800 villagers of the townships of Muahm and Naju came to Seoul to protest against the government reclamation project in their area. There were already existing small scale dikes but the government decided to straighten the dike thus obstructing the free flow of water and inundating the land being tilled by the farmers who were not able to work their farms. The farmers were asking that the reclamation be done in stages to enable them to work their farms. On 8 January 1986, 84 of the villagers were arrested and detained by the police; seven were formally charged and the rest released.
- On 21 January 1986, in Kang Jin town of Chu Nam province, the local agricultural cooperative decided to build a new building and demanded contributions from the farmers. The farmers protested against the plan as ostentatious spending in the midst of the farmers' hunger. Three persons were arrested and given one year sentences and suspended sentences of two years. Seven other people received summary sentences from three to four days.

The Workers

Like their farmer counterparts, the workers are also suffering from low wages and poor working conditions. Workers have struggled to organize and engaged in concerted action to demand wage increases and improvement of working conditions. However, this has taken a collision course with, what was reported to the Mission as, an undeclared government policy of maintaining the lowest level of working conditions, such as wages, hours of work and rest, living quarters, and other working conditions, calculated to make South Korea's export industries more competitive in the world market.

The laws set the standards of working conditions⁶ and allow the formation or establishment of trade unions for the purpose of improving working conditions and enhancing the social and economic status of the workers⁷ in conformity with the constitutional provisions. But the rights of workers to fair working conditions and to organize have been actually violated by the government and the employers, the former by making it more difficult for the workers to organize labour unions and the latter through actual use of violence against and intimidation of the workers with the complicity of the former.

Many cases have already been documented and reported by various human rights groups, including *Asia Watch*⁸, on the violation of workers'

rights. To these may be added the recent case, which was brought to the attention of the Mission, of workers seeking to organize a trade union at a garment company in Seoul. The case was reported to the Mission by the workers' representatives as follows:

On the morning of 1 April, some 20 workers of this company began a demonstration in front of the gate of the factory. They were wearing small cardboard placards on which were written "Drive out yellow unions," "Abolish repressive labour laws," "Let us organize a democratic trade union," etc. The workers sang songs and shouted slogans. Soon a labour inspector from the Dongbu regional branch of the Ministry of Labour came to investigate the incident. Not too long after, a familiar police vehicle appeared on the scene and police took up positions surrounding the demonstrating workers.

The company employs about 220 workers – 60 men and 160 women. Fifty women are regarded as beginners and receive a daily rate between 2,500 and 2,800 Won (equivalent to a monthly wage of 75,000 and 84,000 Won), and 120 machinists receive a daily rate of 3,400 to 4,250 Won (a basic monthly wage of 102,000 to 127,500 Won).⁹ Workers work almost eleven hours a day, with 40 minutes off for lunch.¹⁰ Some 90 women workers enjoy accommodation in the dormitory provided by the company. The dormitory has 13 rooms with about seven people to each room. Living in the dormitory means for the workers longer working hours, always on call to do extra work, and being under constant surveillance and control of the company. Their off-work hours are strictly controlled, too. Only three people from one room can take leave of the dormitory each night. And they are not allowed to spend their nights outside. The factory has no ventilator and is always filled with dust. Food is provided by the company, but it is always lacking in quantity and quality – and on top of that the company deducts 400 Won from the workers' wages for each meal.

During the last few months of 1986, a small group was organized, discussing the problems and issues in the factory, and undertaking some self-study. Graffiti expressing complaints and demands, and raising issues began to appear on the walls of the factory, in the living hall, toilets, etc. Leaflets carrying information about the wage situation, working conditions, and demands for wage increase began to circulate among the workers.

On 13 February, some 100 workers gathered in the dining hall during the lunch break and assumed strike and sit-in positions demanding higher wages and improvements in the working conditions. The workers demanded an increase of 1,000 Won in the daily rate, a 200% increase in allowances, installation of ventilators, and improvement in the living conditions of the dormitory – in all, some 15 demands.

The company, at first, did not respond by direct retaliation against the

workers following the strike action. But since the strike, some portions of the company's production were given off to contract factories and production lines were closed down one by one. Meanwhile, the group of workers – some 20 of them – who were most active in the strike and its preparation, embarked on the work of organizing the workers who participated in the strike to strengthen the organization. Part of the work was the production and circulation of newsletters for the workers.

The situation became tense when the company decided to close down the factory for five days, from March 14 to 18.

Some 40 workers who participated in the strike acted to formally organize a union. On 18 March, they held the founding assembly and formalized the union structures. Within three days of the organization, the membership increased to 70.

On the first day back to work, 19 March, a worker, a former college student who was one of the leading participants in the strike, was arrested by the police and taken to the Anti-Communist Bureau of the Seoul Metropolitan Police Headquarters. On 20 March, members of the union formally presented the necessary documents to the District Administrative Office to register the union. After work some 30 workers went to the district police station to protest against the arrest of their fellow worker and to demand his immediate release. Next day, plain clothes policemen charged into the factory and arrested six workers. Two were released soon after, but four were transferred to the Anti-Communist Bureau. The District Administrative Authority gave notice that the application for the registration of the union may be turned down and demanded the personal records¹¹ of the union officials. Within the next three days, the police formally charged the "student" worker, another was formally charged but released on bail, while the rest were released. On 25 March, the company dismissed one of the released workers. Three days later it invited foremen, drivers, guards, the administrative staff, and a number of young workers to a dinner party to organize a union of their own for the company. When this became known to the workers on 30 March, some 40 workers staged a demonstration in the factory after work until about midnight. The demonstrators protested against the measures taken by the authorities and denounced the action of the company, the yellow union, and the government repression of the workers. That same day, the District Administrative Office sent back the union documents applying for registration of the union. At the same time, the union organized by the company presented its own application for registration.

The series of confrontations with the company and the authorities and retaliation against the workers caused some of the workers to leave the

company. But the remaining workers – some 150 – continued to struggle and to strengthen their ranks. The workers staged a demonstration on 31 March against the repression of the workers' activities.

On 1 April, the management mobilized a private corps of guards to break up the workers' demonstration. It was reported that workers staging a demonstration inside the factory were beaten and dragged out by the guards. Undeterred by the violence, the workers continued their action until 7:00 p.m. The action continued the next day. A group of workers prevented from entering the factory staged a demonstration outside the gate, and the workers inside the factory responded with their own action.

As this report went to press the outcome of this confrontation was not known.

References

- 1) Article 9.
- 2) Article 10.
- 3) Article 30(1).
- 4) Article 30(3).
- 5) *The Korea Herald*, 7 April 1987.
- 6) The Labour Standards Law.
- 7) The Trade Union Law.
- 8) *Asia Watch, Human Rights in Korea*, January, 1986.
- 9) \$1 is equivalent to around 835 Won.
- 10) Article 42 of the Labour Standards Law fixes the hours of work to 8 hours daily, excluding rest period, extendible to 10 hours upon agreement between the parties.
- 11) Sec. 13(3) of the Trade Union Law requires, among the documents to be submitted for the registration of a trade union, statements of the personal history of the union officers.

Conclusions and Recommendations

The following conclusions and recommendations are based on the information received by the Mission. However, as the situation has changed rapidly since the Mission left Seoul, information received up to the end of July has necessarily had an influence, in particular on the recommendations. For instance, the proposal to release political prisoners has already become partly obsolete following the amnesty in mid-July.

Conclusions

Political cases treated differently

The Mission is convinced that, as far as political detainees and prisoners are concerned, the representatives of the government either are not sufficiently informed of, or simply ignore, the fact that political cases are treated differently.

The difference lies initially in the basic legal regulations. The National Security Act permits the detention of witnesses as well as suspects. It thereby allows the police to question anyone who they think might be able to give them any valuable information. This "legal" possibility can be and regularly is, used also to suppress non-criminal activities as well as to prevent any activities opposing the present government. The police uses this legal power extensively.

The prosecution does not interfere with this extension of the police powers, but rather tolerates it. It thereby violates its duties according to article 198-2 of the Code of Criminal Procedure (see above). The general prosecutor as well as the Minister of Justice, both being required by Article 14 of the Public

Prosecutor's Office Act to superintend the performance by public prosecutors of their duties, are equally responsible for any discriminatory treatment of political cases during detention by the police, the prosecution or in prison.

The Minister of Justice is a member of the cabinet. The government therefore shares the responsibility for these violations of the law as guaranteed by the Constitution as well as procedural regulations.

Lack of regulations governing, and supervision of, police officers and prison guards

The present law contains only a rather vague provision that the public prosecutor has to supervise the judicial police and the prison guards (Article 198-2 of the Code of Criminal Procedure, see above). However, it is not precise enough to ensure that the supervision is exercised effectively. The requirement to carry out the necessary supervision every month leaves too much to the discretion of the public prosecutor in charge.

Moreover, police officers and prison guards working closely with the public prosecutors, may not be impressed by nor have much to fear from supervision by a person whom they help to achieve reach the aim of trying and convicting political opponents.

Ill-treatment with the support or toleration of the government, and responsibility for omissions

The Mission is convinced that ill-treatment, brutalities and even killings occur in police or prison detention. The Park case, the sexual torture case of Miss Kwon, and several others have been thoroughly evaluated by the Mission and lead to the conclusion that the claims filed against police officers in these cases are credible. These cases do not appear as single events. Rather, they are part of a systematic effort to intimidate and suppress political opponents, especially university students.

Due to repeated declarations of police officers, but also the suspicious behaviour of the prosecution in these cases, the Mission has come to believe that this maltreatment occurs with the tacit support of the prosecutor in charge and higher ranking officials. It appears probable to the Mission that reports of "accidents" to detainees are reported up to the highest ranks in the prosecuting office, which include the Prosecutor General and the Minister of Justice. Thus,

"accidents" like the killing of Park and the killing of a tortured detainee in 1983 have occurred without the necessary steps being taken to deal with them. This leads to the suspicion that other events of a similar kind have been silently tolerated by higher ranking officials and even the government.

Every one of them is responsible for what has happened since 1983. They have omitted to ensure the necessary supervision and up to the Park case never expressed with clarity their attitude towards "accidents" of that kind. Above all they have not prescribed conditions and procedures for police investigation which would make it practically impossible for "accidents" of this kind to happen.

Election of the president

The Mission came to the conclusion, that under the circumstances and conditions in South Korea a direct election by the population would be the best way to eliminate mistrust and to guarantee future cooperation between all political elements of the society. As President Chun and the Democratic Justice Party's presidential candidate, Roh Tae Woo, have declared, that there will be a direct election of the next president and that president Chun definitely will "transfer the reins of the government to the president thus elected on 25 February 1988", there is no need for the Mission to elaborate its reasons for concluding that this election method appears to be the best.

Relation to North Korea

The Mission has gained the deep impression that the people in power in South Korea seriously fear confrontation with North Korea. If this fear were not given such all dominating priority, a solution to the internal problems would seem to be much easier.

In particular, the severe violation of human rights and the limitation of democracy are based on the assumption that any relaxation in these two fields could lead to a communist invasion from the North, and therefore endanger human rights and democracy in Korea more than any limitations on these rights practised by the government of President Chun.

Recommendations

Most of the following recommendations have by and large been discussed with the representatives of the Korean government whom the Mission met during its stay in Seoul. In these conversations such recommendations were partly accepted, especially those aimed at the prevention of torture and brutalities in police and prison detention.

Abolition of the National Security Act

The National Security Act, which was promulgated on 31 December 1980, is completely out of date. The exceptional situation, which was the basis for this act, no longer exists in 1987. The limitations on legal rights by permitting exceptional emergency measures can therefore no longer be justified.

The situation within the Republic of Korea has led to a tremendous increase in the national income, accompanied by a boom in education. People therefore feel that they share responsibility for what has been achieved. They also feel responsible for "their State" and agree on the need to protect its values against any interference from the outside. As in West Germany the foundation of democracy slowly pushed back the communist influence from the East, so a better protection of human rights and more democracy in South Korea would help to defend the state against any other ideology.

The National Security Act is rather vague in its language and appears to be unconstitutional, especially with regard to the principle *nullum crimen nulla poena sine lege*.^{*} The powers conferred on the police are tremendous and the control system to avoid abuses is almost non-existent. On the other hand, the criminal code, the code of criminal procedure and other criminal regulations provide the state with sufficient possibilities for preventing and if necessary for prosecuting serious offences which in the words of Article 1 of the National Security Act could "endanger the national security, so that the safety of the state as well as the existence and freedom of the citizen may be secured." Therefore, there is no reason or excuse to tolerate the existence and enforcement of the National Security Act any longer.

The repeal of the National Security Act could be accompanied by an educational programme to promote the concept of democracy and to bring the

* There is no crime nor punishment except in accordance with law.

values of human rights in detail to the consciousness of all and not only of the educated people in Korea. A society duly informed about those ideas and values will easily be able to defend itself against other ideologies.

All people the Mission talked to, including Cardinal Kim and high ranking officials of the government, agreed that this way would be more successful in reaching the declared aims of the present government than putting the people under ever greater pressure or tension.

Guidelines for the police

The regulations for the police and prison guards are rather weak and in the opinion of the Mission completely ineffective. What is needed is a precise provision stating under what conditions a suspect can be kept in police detention, how he has to be treated, and what forms of treatment are forbidden in all circumstances.

These regulations have to describe the rooms for detaining suspects as well as the offices in which the investigation has to take place; for example, how they have to be equipped and what objects are not permitted in these rooms.

Any disobedience to these regulations should be followed at least by disciplinary sanctions. The regulations should also state explicitly the provisions which can and will be applied if any maltreatment or brutality occurs.

The regulations should especially focus on cases where suspects are not willing to disclose facts wanted by the police. They should describe precisely what methods are lawful and where the border line is to an illegal investigation. For instance, it should be mentioned that hand-cuffing of the investigated person is forbidden. Any hand-cuffs necessary to bring the suspect to the police station should have to be taken off before the investigation begins. It should be prescribed that one man alone should never interrogate a woman, and that if the interrogation continues outside usual office hours, a woman has to be present too.

With a view to eliminating torture and every form of maltreatment, it should be especially emphasized that, according to the experience of recent years, separate interrogation premises should be abolished. Interrogation should take place in regular police stations. In particular, there should be no baths, tubs or the like in interrogation rooms, which appear to have been used only for the purpose of water torture. Investigation rooms should not have sound-proof doors and should be at least partly visible from the next room or from the corridor. No facilities should be at hand which could be used as torture instruments.

These guidelines for police and wardens would be ineffective if not combined with a system of supervision. The supervision should not lie only in the hands of the prosecutors. It is recommended that a parliamentary investigation committee, consisting of deputies from all parties, should visit regularly but without advance notice all police stations and prisons in order to check the conditions there and whether the guidelines are respected.

Immediate right to counsel

The international experience in States where torture and police brutalities occur has shown that, in addition to an educational programme for the police, combined with precise regulations containing guidelines for investigations and describing the interrogation rooms, the right of the suspect to contact a lawyer immediately is the most effective guarantee. This right, however, guarantees protection against violations of human rights only if it is combined with the right of the lawyer to visit immediately and talk to his client.

It is claimed that the preliminary investigation may be hindered by such a right, but this is based on mistrust of the profession of lawyers, which is not supported by international experience. The right to an immediate visit should at least be given after the suspect has been detained for 24 hours.

Standard Minimum Rules

The United Nations Standard Minimum Rules for the Treatment of Prisoners should be accepted and applied, and should be given to all persons who by their professions come into contact with detainees, and to all persons detained. It should be emphasized that these are minimum prerequisites for the treatment of suspects as well as of convicted offenders.

No further guidelines for the press

The guidelines for the press should be abolished. Even though the Mission has gained the impression that the press has reported quite openly and critically, the guidelines necessarily aim at influencing and limiting the freedom of the press.

All cases of dismissed journalists should be re-examined in order to re-install those against whom no reasonable grounds for dismissal existed.

The coming elections

All coming elections should be organised in such a way that no doubt whatsoever can be raised that they are completely free, that is to say without any improper influences from the government or any other group or institution. This implies that all polling stations are monitored by the parties engaged in the elections.

It is also recommended that observers from outside Korea should be admitted if any of the parties so demands.

Summary

The Mission highly approves that after its visit to Seoul in April 1987, progress has been made towards greater protection of human rights and installing democracy. It received at the end of July an answer from the Ministry of Justice saying that the presidential candidate of the DJP has announced a new beginning in advancing the protection of human rights on an ever-increasing scale. It has also been informed that these endeavours are fully endorsed and supported by the President of the Republic. The amnesty of political prisoners and the restoration of civil rights, or parts of them, are a significant step forward in this direction. The Mission highly appreciates this and expresses the hope that the cases of the remaining political prisoners will be investigated thoroughly to find out whether or not it is still justified and necessary to keep them in prison. If the Republic of Korea handles this situation soon, and if the planned elections are truly free and fair, all those following with concern the situation in the country will be glad to admit that the country has by itself overcome a difficult period in its history and is on the way to becoming a fully respected member of the world community.

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