



ASIAN HUMAN RIGHTS COMMISSION

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Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: Human rights trailing democracy in the Republic of Korea – legislation and labour rights concerns and the violent repression of demonstrations

On the occasion of the December 10, 2005 International Human Rights Day, the Asian Human Rights Commission (AHRC) wishes to raise some serious concerns regarding the human rights situation in the Republic of Korea. Concerning this, we have selected to draw your urgent attention to a limited set of issues concerning violations of rights, including: increasing police brutality and repression of demonstrations; the deteriorating labour rights situation; and Korea's National Security Law.

In 2005, police brutality has caused serious injuries to citizens engaged in demonstrations, and notably one death. A farmer, 43-year-old Jeon Yong-Cheol, died as a result of his injuries on November 24, 2005 after being beaten by riot police during a rally in Seoul on November 15. The Republic of Korea has made significant headway towards respecting and realizing human rights and democracy in the last decade. However, Mr Jeon's death and the police brutality towards protesters indicate that significant improvements are still required.

During the same rally, another protesting farmer, Hong Deok-pyo, was hit by riot police on his back-bone and neck-bone injuring his spinal cord and paralysing from the chest down. Another protestor, Kim Deok-yoon, remains in hospital after suffering severe beatings. At least two of Mr. Kim's ribs and an arm were fractured; as a result he suffered haemorrhaging in the lungs. On the same occasion, around 150 persons were injured, eight of whom were injured severely. This was not an isolated incident in 2005 and there are various occasions where the police have brutally assaulted protesters in recent years.

The Republic of Korea continues to maintain restrictive provisions on the freedom of assembly. The worsening of police brutality in recent times has followed the government's revision bill concerning the Law on Assembly and Demonstration of South Korea on 29 December 2003, which severely restricts the Korean people's right to peaceful demonstration. Despite public outrage against such laws and police brutality, the government of Republic of Korea has not taken any effective steps towards improving the enjoyment of the rights to the freedoms of assembly

and expression. There has also been **NO** effort by the Government to compensate victims of police assaults.

Another serious concern is the deteriorating labour rights situation in the country. The Republic of Korea's rapid economic development has come at the expense of rights of millions of its workers. Attempts by workers to protest against violations of their rights have been met with violent repression by the police, and with other actions such as dismissals. The existence of criminal defamation provisions in the country's criminal law works mainly to the advantage of large companies, which often resort to law suits against workers who are involved in trade unions. Up to 2004, there have been about 100 union leaders sued for an amount totalling about 6.8 million US Dollars by large companies. As the result of the workers' inability to pay such large sums, most of them are sent to jail under the criminal defamation provisions in the law. One good example is the case of Mr. Kim Seong-Hwan, the President of Samsung General Trade Union who is currently serving a jail term due to criminal defamation. A Samsung company sued Mr. Kim after he revealed Samsung's illegal practices against its employees. Although UN treaty bodies and the International Labour Organization have urged the government of Republic of Korea to allow greater rights for its workers and for the protection of their right to join trade unions and demonstrate, these calls have fallen on deaf ears. Therefore, there is an urgent need for greater international support, including from UN agencies, for the protection of workers' rights in the Republic of Korea.

Another major concern is Republic's National Security Law, which ensures the continued violation of many rights, including freedom of expression and freedom of association. In its jurisprudence dated 23 August 2005 (Communication No. 1119/2002: Republic of Korea), the UN Human Rights Committee has asked the Government to pay compensation to a student leader who was imprisoned for being a member of an "enemy-benefiting group" according to the National Security Law. The Human Rights Committee has recommended that the government amend its National Security Law, and the country's National Human Rights Commission and many civil society groups have called for its abolition. The Human Rights Committee has also noted the broad interpretation and application of the provisions of the National Security Law, which often result in violations of human rights. However, this draconian law continues to cause fear for the South Korean people, bringing back dark memories of blatant human rights violations perpetrated under such laws in the country's military dictatorial past. There is a need for greater international support for the abolishing of the Republic of Korea's National Security Law.

AHRC has highlighted a number of human rights issues relating to South Korea, including, prolonged detention before trial, the absence of a law prohibiting and criminalising torture, the question of irregular workers, the rights of migrant workers and prolonged delay in adjudication of cases in the courts, as part of its special report on the occasion of the International Human Rights Day, which is available online at <http://www.ahrchk.net/hrday2005>.

We trust that you will share in our concern for the human rights situation in the Republic of Korea and act accordingly to pressure the government for change.

Yours sincerely,

Basil Fernando
Executive Director



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FOR IMMEDIATE RELEASE

December 7, 2005

A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

THE REPUBLIC OF KOREA (SOUTH KOREA): Human rights trailing democracy – the violent repression of demonstrations, and legislation and labour rights issues remain problematic

Although the Republic of Korea is regarded as a country with protected democracy and human rights, the people continue to suffer serious setbacks. Police brutality, especially by riot police, has become a serious concern in recent years. Other issues include violations of the freedoms of expression and assembly, criminal defamation of workers, the rights of migrant and irregular workers, excessive delays to court cases, the absence of legal provisions to outlaw torture, the rights of conscientious objectors to military service and the legal provisions allowing for the prolonged detention of suspects without trial.

Police brutality

This year, police brutality has caused serious injuries to protesting citizens and, in at least one reported case, death. A farmer died of serious injuries: 43-year-old Jeon Yong-Cheol died on November 24, 2005 after being beaten by the riot police during a rally in Seoul on November 15. Jeon's death and police brutality towards protesters comes as a shock from a democratic nation like the Republic of Korea, which has made significant headway towards respecting and realizing human rights in the last decade. Riot police hit another farmer, Hong Deok-pyo, who was protesting in the same rally on November 15, on his back-bone and neck-bone, injuring his spinal cord and paralysing him from the chest down. Another protestor, Kim Deok-yoon, remains in hospital after suffering severe beatings. At least two of Mr. Kim's ribs and an arm were fractured; as a result he suffered haemorrhaging in the lungs. On the same occasion, around 150 persons were injured, eight of whom were injured severely.

Such riot police brutality is not an isolated incident. During the protests at the new U.S. army site in Peongtaek in July 2005, many protesters were injured. A senior police commander, Lee Jong-woo, reportedly shouted to the riot police, "beat, kick and kill the demonstrators." At that time about 150 demonstrators were injured, but no legal or disciplinary action was taken against Lee. Believed to be an "expert police commander," Lee also supervised the riot police in the rally where Jeon was beaten.

Furthermore, about 350 members of the Ulsan Construction Plant Union were injured during their strikes from March to May in 2005 due to a violent police crackdown. The workers went on a strike against the company's dismissal of union leaders and the repression of their union activities, and called for improvement to their working conditions.

International observers have noted with concern increasing riot police brutality in the last three years. For instance, riot police brutally attacked protesters in Buan County who held demonstrations against the government's plan to construct a nuclear waste storage facility in the country in 2003. An estimated 100 people were injured. In March 2005, the National Human Rights Commission (NHRC) of Korea issued recommendations regarding this matter. It concluded that the police's excessive repression violated the rights of the Buan protesters and urged the Korean National Police Agency to compensate the victims. The NHRC of Korea also opined that the prohibition of demonstrations at night has no legal justification. The police have maintained that demonstrations at night are illegal and have attempted to punish protesters who participated in such demonstrations. The Korean National Police Agency has shown reluctance to implement the NHRC's recommendations.

AHRC has learned that riot police have a practice of removing the protective rubber hems from their metal shields and sharpening their edges, which are used to attack protestors. Such shields are not used to protect the police, but are lethal weapons used to attack protestors. Although this practice has been caught on film, there has been no discipline or other action taken against riot police who resort to such brutal methods. Such inaction against this violent conduct by the riot police and their commanders proves the Korean government's complicity in police violence.

Legislative restrictions

The Republic of Korea continues to maintain laws restricting the freedom of assembly. Besides increasing police brutality in recent times, the government's revision bill for the Law on Assembly and Demonstration of South Korea on December 29, 2003 severely restricts the Korean people's right to the freedoms of assembly and expression.

The main contents of the revision bill include:

1. Allowing police agency supervisors to ban street marches that may cause major traffic congestion on 95 roads in key cities across the nation, including Sejongro, Daehakgno and Gwanghwamun in downtown Seoul, three locations that have historically been used for public assembly. Human rights groups argue that banning street marches at these places violates the rights of assembly and demonstration, even if these may cause major traffic congestion.
2. Authorizing the police to ban future rallies of an organization and all other rallies protesting the same issue, if a civic group stages a protest that obstructs public order or becomes violent. Human rights groups worry that a group's protests can be completely banned with just one precedent of public disorder.
3. Allowing the police to ban a rally believed to substantially damage facilities such as public schools, foreign embassies and military compounds at the request of nearby resident(s). This measure will apply to U.S. military compounds as well as Korean ones.
4. Providing for the punishment of an organization and the six-month imprisonment of its speaker if the level of noise at any given demonstration exceeds a certain volume prescribed by an executive order. However, human rights groups have said that this maximum is below the level required to use a loudspeaker, and therefore this regulation limits demonstrations to small gatherings.

Human rights groups strongly condemned the move as an attempt to stifle their right to hold rallies. One activist has said, "The revisions exclusively represent the position of the police.

Although rallies may bring inconvenience to some, it is much more important to protect the people's right to rally and assemble, as the weak have no other way to express their opinions other than through those actions."

There was reportedly no discussion with the NHRC on this revision bill, nor was there a legislation announcement. There was also no public hearing by the government until the Home Affairs Committee of the National Assembly approved the revision bill of the Law on Assembly and Demonstration on November 19 2003.

Freedom of expression and the National Security Law

Under the National Security Law, citizens continue to suffer from human rights violations, especially in terms of freedom of expression and freedom of assembly. An example is the case of Lee Jeong-Eun, the former vice president of the Korea Federation of Student Councils (Hanchongnyeon), who was arrested on August 8, 2001 and was subsequently sentenced to one year's imprisonment for violating article 7 of the National Security Law, by being a member of an "enemy-benefiting group" by the Seoul District Court. His subsequent appeals did not succeed. When he filed an individual communication to the UN Human Rights Committee, it decided that the state had violated Mr. Lee's rights, especially his freedom of association, and has asked the government to pay adequate compensation to Mr. Lee for the imprisonment he has suffered.

The Human Rights Committee also stated that the Republic of Korea has not demonstrated how membership in organizations such as Hanchongnyeon pose a real threat to national security, but rather acted upon hypothetical grounds.¹ The Human Rights Committee has also requested that the Republic of Korea amend the National Security Law and ensure that similar violations do not occur in the future. Despite this, Hanchongnyeon remains outlawed by the government of the Republic of Korea, forcing its members to go underground. A number of its members remain imprisoned despite about 200 of its members having been given amnesties in August 2005.

The UN Committee also urged the Korean government to abolish the "law-abidance oath" imposed on prisoners who are convicted under the National Security Law before they are released in 1999.² Even six years after these recommendations, these provisions still exist. This demonstrates the government's complete disregard for citizens' civil and political rights relating to the National Security Law. The root cause of the problem is the existence of the National Security Law itself. There have been continuous calls for the Korean government to repeal its National Security Law by a wide spectrum of civil society groups, as well as the country's NHRC. However, there has been no significant attempt to abolish this draconian law, paving the way for continued human rights violations.

Delays to cases and fair and speedy trials

Prolonged delay in adjudication of cases in the Republic of Korea undermines the right to fair and speedy trial. Such delays adversely affect the litigants, especially those who are workers illegally dismissed and sued by their employers.

¹ UN Human Rights Committee, Communication No. 1119/2002: Republic of Korea, 23/08/2005 (CCPR/C/84/D/1119/2002 (Jurisprudence))

² Concluding observations of the Human Rights Committee: Republic of Korea, 01/11/99 (CCPR/C/79/Add.114)

In the case of Kim Seok-jin, who was laid off from his job at Hyundai Mipo Shipyard in 1997 while a union official at the company, the whole case took five years and five months to conclude after the case was filed in the court and over eight years after his dismissal. Such delays affect litigants, not only financially but also psychologically. This is especially unacceptable as many victims of court delays hail from the poorer sections of society. Kim won the first and second trial, and the courts ordered that he be reinstated. Each case proceeding was finished within a year. However, the Supreme Court delayed a judgment in his case for 41 months before it made a final decision, ordering Mr. Kim's reinstatement on July 21, 2005. According to civil code provisions, appeals for civil lawsuits should conclude within five months from the day the higher court receives case records. Considering that the Supreme Court customarily takes around 13 months to consider layoff annulment cases, the delay in Kim's case seems unbelievable.

According to statistics recently presented by a judge from the Supreme Court, 85.7% of the cases filed in Supreme Court were concluded within a year in 2004. However, the problem is that most victims of prolonged cases come from the most economically and socially vulnerable sectors of the society. It is therefore necessary to address issues or procedures causing delays in cases and take steps to remove them.

Criminal defamation of workers

Another serious issue is the common practice of affluent and large companies' attempts to restrict the rights of their workers, when the workers criticise labour practices, by suing them for defamation. In such cases where the court has found workers guilty, it has asked the worker to pay large sums of compensation to the company, and due to the workers' inability to pay such enormous amounts, they have been sent to jail. The Korean Criminal Code's articles 307-312 deal with criminal defamation and prescribe a maximum penalty of three years' imprisonment for failing to pay compensation in a case like defamation.

A good example is the case of Kim Seong-Hwan, the President of Samsung General Trade Union, whose members are contract workers and dismissed workers of Samsung Corp. He was dismissed in 1996 from Yicheon Electrical Equipment (Ltd.), which is affiliated to Samsung SDI, due to his involvement in the establishment of a democratic workers' union. Since then he has done much to reveal Samsung's illegal practices against its employees and union activists. Due to his activities, he has faced various libel cases filed by Samsung. The Supreme Court sentenced Kim to imprisonment for two months for committing libel against Samsung SDI this October. Kim was sentenced to three years in prison with a four-year stay of execution for obstruction of business in July 2003.

This is not an isolated incident. According to the Korean Confederation of Trade Unions, until 2004, about 100 union members were sued for damages by a number of companies and institutes, for a total of 6.9 billion won (about 6.8 million USD). The UN Committee on Economic, Social and Cultural Rights noted concerning the Republic of Korea, in 2001, that it is 'entirely unacceptable the approach taken to criminalize strike activities [and it was] deeply disturbed by the excessive force used by the police against labour demonstrations.'³ In addition, although the International Labour Organisation has repeatedly recommended that the Korean government refrain from using "obstruction of business" charges to hand out criminal

³ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Republic of Korea, 21/05/2001 (E/C.12/1/Add.59)

punishment to workers for their trade union activities, the Korean Confederation of Trade Unions reported that two-thirds of all the workers arrested and imprisoned in 2001 were charged and convicted for "obstruction of business"; this practice is continued until this day. The UN Committee also urged the Republic of Korea 'to desist from using criminal proceedings against striking trade unions.'⁴

In many places in Asia, including Hong Kong and India, criminal defamation has been abolished. The trend is to do away with such provisions in criminal law. However, the Republic of Korea, which is regarded as a progressive democracy, still holds onto these backward provisions, which are used by financially powerful companies to their advantage to victimize their own workers. Allowing the existence of legal provisions that curtail workers' free expression and demands for better conditions is entirely unacceptable.

The existence of provisions allowing prolonged pre-trial detention and the lack of a law criminalising torture

Provisions of criminal law in the Republic of Korea still allow for prolonged detention of suspects before trial — 30 days in ordinary cases and 50 days in cases involving the National Security Law. In 1999, the UN Human Rights Committee noted the excessive length of permissible pre-trial detention and the lack of defined grounds for such detention, and urged the government to amend related laws in accordance with the rights of detained persons under article 9 of the International Covenant on Civil and Political Rights.⁵ Although six years have passed since this recommendation as well as continuous requests from local NGOs, the Republic of Korea still maintains these legal provisions. The existence of such procedures in the Republic of Korea is appalling.

Torture is not a crime in the Republic of Korea. Torture and inhuman or degrading treatment or punishment reportedly continues in prisons of the Republic of Korea. The UN Committee against Torture urged the government to 'enact a law defining the crime of torture' in 1996.⁶ Ten years have passed since these recommendations, but torture is still not a crime in Korean law. Prescription of punishments for state officials found guilty of torture, inhuman or degrading treatment or punishment must accompany the criminalisation of torture. There has been no progress in the Republic of Korea in this regard.

Rights of Migrant Workers

The Korean government's crackdown on migrant workers has continued since November 2003, after it passed a new migrant worker management system, entitled the Employment Permit System which took effect in August 2004. This Employment Permit System, along with the Industrial Trainee System, fails to allow migrant workers to change employers freely, the lack of renewable visas (the current limit is two-years), and the prohibition of migrant workers from joining labour unions. Furthermore, workers must obtain annual permission from their employers to stay in the country, as they are on one-year contracts. The employer therefore essentially has complete control over the wages and working conditions of migrant workers.

⁴ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Republic of Korea, 21/05/2001 (E/C.12/1/Add.59)

⁵ Concluding observations of the Human Rights Committee: Republic of Korea, 01/11/99 (CCPR/C/79/Add.114)

⁶ Concluding observations of the Committee against Torture: Republic of Korea, 13/11/96 (A/52/44, Paras, 44-69)

While implementing the Employment Permit System, the Government began to deport migrant workers who had been in South Korea for more than four years. It is estimated that more than 110,000 migrants remain as undocumented workers in Korea. Since then, many other migrants have fled their jobs and homes in fear of the immigration police and many cases of harassment and arbitrary arrest of migrants have been reported. We are also highly concerned about the condition of arrested migrant workers in detention facilities.

On May 14, 2005, Bangladeshi national Anwar Hossain, the leader of the Migrant worker Trade Union, was arrested by immigration officers when he was returning home after a union meeting. The MTU, which was founded in April 2005, grew out of the Equality Trade Union, Migrant's Branch (ETU-MB), founded May 2001. It is wholly organized and led by migrants. We anticipate that the Korean government will ask Bangladesh's Ministry of Home Affairs for permission to deport Anwar Hossain. To date, eight leaders of the migrant worker's union have been deported even though they may face arrest and prosecution upon returning to their countries of origin. Of serious concern is the fact that among this group are Bangladeshi and Burmese nationals, who face a significant risk of being subjected to torture once deported, which represent violations of the principle of non-refoulement as contained in the UN Convention Against Torture, under Article 3.

In May 2005, the National Human Rights Commission of the Republic of Korea recommended that the Ministry of Justice revise the Immigration Administration Act to clearly define legal provisions and conditions regarding the arrest of undocumented migrant workers, in order to prevent arbitrary and illegal actions by state officials. However, the Ministry of Justice has ignored these recommendations. There has been a continuous crackdown on undocumented migrant workers to date.

Rights of Irregular workers

The Irregular Workers Bill pending in the National Assembly is another concern in the country. The government of the Republic of Korea said that the Bill was devised to provide improved protection to irregular workers, as well as ensure labour market flexibility to help employers. However, labour rights groups argue that expanding the industries in which irregular workers can be hired would allow companies to manipulate the system by increasing the number of irregular workers.

Regarding this, the National Human Rights Commission of Korea stated that the Bill is not likely to help reduce the nation's burgeoning ranks of irregular workers or rectify the unreasonable discrimination against them. The National Human Rights Commission also said that the bill should be re-drafted and irregular forms of employment should be adopted only exceptionally and in a limited way. The Commission further said that the principle of equal pay for equal jobs should be implemented in order to root out widespread discrimination against irregular workers.

However, the Government, who wants to make the nation's traditionally rigid labour market more flexible, disregards suggestions from labour groups as well as from the National Human Rights Commission, and is constantly pushing the enactment the bills into legislation. If the bill is introduced, it will worsen the situation of irregular workers and will also threaten the stability of employment of regular workers.

In Korea, the number of irregular workers has rapidly increased in recent years and now accounts for over 50 percent of the nation's total workers. Irregular workers only receive 60 percent of regular workers' wages on average, and can easily be dismissed, as most of them are short-term contractors. They are also isolated from the social welfare system. In 2005, there were several mass demonstrations by irregular workers calling for the improvement of their working status and it has become one of main human rights issues in Korea.

Other concerns

Another significant concern is the continued imprisonment of conscientious objectors to military service. To date, there are over 1,100 conscientious objectors serving jail terms. Although there have been proposals, mainly by the civic groups, to allow alternative services other than military service, the Ministry of Defence has blatantly disregarded such proposals.

Conclusion

There are serious concerns with regard to the human rights situation in the Republic of Korea, especially in relation to police brutality, labour rights, the National Security Law and other criminal law provisions allowing violations of human rights to continue. Although the Republic of Korea has achieved democracy, mainly due to the suffering and sacrifices of its own citizens, it has a long way to go in improving its human rights standards in practice.

There are a number of issues of concern relating to the rule of law in the country. Law enforcement agencies, such as the police and especially the riot police, continue to employ brutal and violent practices towards the public, causing severe injuries and even death. It is apparent that although there have been many changes in the country in terms of democracy and human rights, there have been no serious, timely or effective efforts for police reform. The Government of the Republic of Korea should take police reform seriously and bring an immediate end to police violence. Government measures should also include proper punishment for police officers who have carried out violent acts, and their commanders, as well as a public apology and adequate compensation to victims and/or their family members.

The Republic of Korea also should repeal the legislation allowing criminal defamation suits to be lodged, as this results in many labour activists being sent to jail as a consequence of legal attacks by their employers. Allowing such provisions to remain in criminal law displays complicity on the part of the government in limiting and suppressing the rights of workers.

The Republic of Korea continues to restrict the rights of its workers, including the right to join trade unions and the right to demonstrate, and the police is used to violently repress these workers. In an emerging democracy, brutal suppression of the rights of workers is entirely unacceptable.

The problem of the rising number of irregular workers and the lack of legal protection for their rights, including fair wages and protection from arbitrary dismissal, seriously need to be addressed. Despite the problems facing irregular workers, the government is trying to bring legislation into force allowing further manipulation of these workers by employers, and preventing them from finding redress for violations of their rights. The AHRC urges the government of Republic of Korea to abandon the planned Irregular Workers Bill and to follow the recommendations of the National Human Rights Commission of Korea, that the bill be re-

drafted and irregular forms of employment should be adopted only as exceptional and limited measures.

One of the main components of legislation affecting many rights, including the freedom of expression and association, is the National Security Law. Many civic groups and the country's national human rights institution have called for the abolition of this law. The continued existence of such a law is bound to lead to the violation of the rights of many citizens. AHRC therefore joins in the popular call to abolish the National Security Law.

The absence of a law criminalizing torture is another major hurdle to the enjoyment of human rights and the protection from abuses thereof. There is no such law despite recommendations made by the UN Committee against Torture for such a law to be enacted. This allows torture or acts of inhuman or degrading treatment or punishment to be carried out by the state officials without fear of criminal punishment. The Republic of Korea should take urgent steps to criminalise torture and to bring such a law into full conformity with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Despite continuous calls by NGOs as well as human rights treaty bodies, such as the UN Human Rights Committee, the Republic of Korea still continues to have provisions in criminal law allowing for the prolonged detention of suspects before being trial. Such provisions need to be abolished, and the country's laws need to be brought into full compliance with article 14.3 (c) of the International Covenant on Civil and Political Rights, which states that suspects must be tried without undue delay.

This report is not an exhaustive in covering all the human rights issues in the Republic of Korea, but highlights some issues which cause serious concern within and outside the country. The Republic of Korea has overcome a dark past comprising massive human rights violations, especially under military dictatorships. Today's democracy in the country has been achieved at the expense of the lives of many Korean citizens. No one wishes the country to return to its dark past. Instead, everyone hopes that Korea will move forward progressively, especially in terms of democracy, human rights and the respect for the rule of law. However, unfortunately, events mentioned in this report are still holding Korea back from moving along that progressive path. Development at the expense of rights and democracy will not last long and will surely falter, producing catastrophic results. The Republic of Korea should not only be a successful economic model in the Asian region, it should more importantly be a successful model of democracy and human rights. Therefore, the Government of the Republic of Korea is urged to attend to the issues raised in this report, as well as other issues raised by the vibrant civil society organizations engaged in the promotion and protection of rights in the country.

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About AHRC The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984