REPUBLIC OF KOREA

Human rights developments in 2007

I. Major development

1. Revision of Criminal Procedure Act

The bill of the Criminal Procedure Act (hereafter ' the Revised Act') has been passed by the National Assembly and will be effect on 2008. The Act has been revised for the first time since it was established in 1954.

Since human rights violations have occurred frequently by the police and investigating prosecutors throughout the entire stage of criminal investigation, the Revised Act stresses the procedural process in which the rights of defense for a suspect are secured, detention of a suspect is legally checked and technical advancements are adapted. Followings are a brief description of revised as well as newly enacted provisions of the Revised Act in the field of the police investigation and gathering evidence.

1. A. The Right of Defense strengthened

a. Adoption of Fundamental Principle of Un-custodial investigation

Article 198 of the Revised Act proclaims that a criminal investigation shall be conducted principally on a suspect in a non-custodial status. This amendment is introduced for the purpose of broadening the availability of an un-custodial criminal investigation by the narrow interpretation of the statutory causes of detention in the article 70 (1). The matters that shall be considered in determining the causes of the detention are: the severity of the crime, dangers of recidivism and concerns for the peril of a victim or important witnesses. Because of this newly adopted clause, suspected criminals have the *prima facie* right of asking for non-custodial investigation against criminal investigations.

b. Suspect's Right to have an Attorney Participated in the Interrogation

Article 243-2 of the Revised Act articulates the suspect's right to have an attorney participated in the process of a criminal investigator's interrogation. This Article demands that a judicial police officer or a prosecutor have to allow an attorney to interview and communicate with a suspect participation in the process of interrogation. This Article is aimed at substantiating the right to attorney in article 12(4) of the Korean Constitutional Law and the codification of the judicial opinion in the Korean Constitutional Court case (2004. 9. 23. 2000 HUNMA 138) recognizing an attorney's legal consultation and communication with a suspect at the request of a suspect who is under judicial officer's interrogation as a part of the suspect's fundamental right to attorney shall be allowed to participate in the process of criminal interrogation even though there are no provisions of law which related to it explicitly. The suspect's

attorney, however, is not allowed to interfere with an investigation into the crime other than the suspect's interrogation. Originally the government bill of revision included the process of all the stages of investigation in the area where the suspect's attorney may participate. During the deliberation at the National Assembly, the area of participation had been narrowed by worries that the secrecy of the criminal investigation was compromised too much. The suspect's right to have an attorney participate is significant in that the right allows an attorney not only to be present at the instance of interrogation but also to communicate and give legal consultations instantly, and to deliver his or her legal opinion on all the aspects of interrogation to the interrogator at the final stage of the each interrogation. The attorney may raise the time when that is currently ongoing. All of the attorney's opinions delivered during the interrogation for her client shall be recorded in the interrogation dossier (Protocol) that is the formal document required by the Korea Criminal Procedure Act to be submitted as written evidence at trial and verified by the attorney.
This right of suspect is enormous, and broader than the right upheld in other nations that usually allow an attorney to be present at the place of interrogation. With this right to be substantiated, we hope that all of the interrogating process shall be kept fair and transparent.

c. Video Recording

The Article 244-2 of the Revised Act introduces a technical advancement in video recording system into the criminal interviews with witnesses or criminal interrogation with suspects. Even though the video recording has very limited evidentiary value such as establishing the genuineness of an interrogation document or an interview document those are a part of a dossier based on article 312 of the Revised Act or very limited usage such an assistant material to refresh fleeing memory based on article 318-2 (2) of the Revised Act, it will be utilized to ensure the strict observance of the legal requirement and the deference to the human rights of the suspect in all of the process of the criminal investigation.

Video recordings, however, have a lot of potential to distort the true facts through editing and manipulation of the scene. Considering the risks, the Revised Act strictly requires that (i) a suspect and/or her attorney be informed in advance of the scheduled video recording, (ii) the recording shall be covered all the process of investigation without omitting any scene and also covered objective circumstances with respect to the recording, (iii) when finished, the video recording shall be sealed before a suspect or her attorney and have them signed. This measure is for the purpose of getting rid of the possibility of manipulation.

d. In advance Notification of the Right to Refusal

The Article 244-3 of the Revised Act strictly requires that interrogating prosecutors and police officers give a suspect advance notification that she may refuse to answer questions. This requirement is different from the generally recognized Miranda Warning that is stipulated in article 200 (2) of the Revised Act. This revised article of 244-3 is introduced for the purposes of correcting the actual interrogation practice in which the

Miranda Warning is delivered for the sake of formality and ensuring the legality of the investigation process. Because of this provision, a suspect shall be informed in advance of an interrogation against her of (i) her legal right to refusal of answering any one or all the questions, (ii) no unfavorable treatment shall be given to her because of her refusal, (iii) all of the statement given to the interrogator shall be used as evidence against her. The facts that the notification is given and the response from a suspect to the inquiry of whether she exercises her right to have an attorney or not shall be recorded in the dossier. This article will enhance a suspect's awareness of her right with respect to her response to the interrogation.

e. Recording of an Investigation Process

The Article 244-4 of the Revised Act requires that a judicial police officer and an investigating prosecutor record at the separated document items such as (i) the time when a suspect arrives at the interrogating place, (ii) the time when the interrogation is initiated and ended, (iii) other facts that are need to review the process of interrogation. This revision is aimed at ensuring the interrogation process being transparent and thus results in the legality of the evidence, the voluntariness of the suspect's statement, and making review of the investigation easier.

1. B. Reformation in the Process of Arrest, Search and Seizure

a. Request for Warrant after Emergency Arrest

The Article 200-3 of the Korean Criminal Procedure Act allows a prosecutor or a judicial police officer to arrest a suspect without a warrant issued by a competent judge in case of urgency such as finding a suspect by chance and the suspect is: (i) concerned to destroy evidence, or (ii) on the run or concerned to flee. The previous emergency arrest system has been arguably misused to secure immature confession or a suspect's unprepared answer because a prosecutor has the right to have the suspect detained for 48 hours without a warrant. It is not very difficult for police officers to pretend that they have found a suspect by chance even though she has been under surveillance for a long period time. If the crime cited is severe, a suspect is regarded to be prone to destroy evidences or to flee. Thus, it is necessary to limit the period of warrantless detention by asking a prompt request of warrant. The Article 200-4 of the Revised Act mandates a prosecutor to request warrant 'without delay' when a suspect is under the emergency arrest. This newly adopted article is, however, very limited in its application for the time being since 'without delay' does not have definitive definition in the law. Police officers and prosecutors prefer to interpret the article as 'without delay' in 48 hours'. We hope that a court may narrow the definition in order to prevent criminal investigators from abusing the emergency arrest system.
This article also prepares a measure to prevent a misuse of the system from happening. In case a suspect is released by a prosecutor without requesting warrant, the prosecutor shall notify with respect to the emergency arrest and subsequent release. The released suspect, her attorney, or his or her relatives may review the notification document in order to find any of the illegalities with respect to the emergency arrest.

b. Mandatory Court Hearing on the Arrest

The Article 201-2 of the Revised Act demands that a court shall provide a hearing for all the suspects under arrest. Previously a court hearing was provided only at the request of a suspect. The hearing under this article shall proceed promptly and be finished by the next day if the warrant is requested. With this revision, the criminal procedure system in Korea finally avoid suspicious attention from peers based on the lack of explicit provisions guaranteeing a suspect's fundamental right to be heard by a competent judge before the arrest.

c. Review of Arrest and Detention

The Article 214-2 of this Revised Act allows all the suspects whether they are under arrest by warrant or without warrant because of emergency to have their arrest reviewed by a court. Previously, only the suspects under arrest by warrant were allowed the review of a court. This article also provides notification by a criminal investigator who arrests a suspect to the suspect's attorney, relatives, family members, etc for the purpose of facilitating this review system. Once a suspect asks a review hereof, a court shall finish the review within 48 hours from the time of the request received.

d. Emergency Search and Seizure

Previously, in case of emergency arrest, investigators were allowed to search and seize items in the suspect's possession, custody, or under suspect's management for 48 hours without warrant under the article 217 of previous Korean Criminal Procedure Act. This practice was largely criticized because of its rampant misuses. The article 217 of the Revised Act limits the scope of the emergency search and seizure to be incidental to the emergency arrest that has already been executed. The new emergency search and seizure is allowed when a seizure for a necessary item is time pressed for obtaining warrant for the period of 24 hours.

1. C. Reformation of Criminal Evidence Rule

a. Introduction of Exclusionary Rule

The Article 308-2 of the Revised Act explicitly introduces the exclusionary rule of evidence similar to that of the U.S.A. This article pronounces that any evidence which has been gathered in the violation of due process shall not be admitted as effective evidence. Previously Korea Supreme Court applied this rule on the interrogatory document submitted as a dossier even though there were no provisions in the Korean Criminal Procedure Act. The rule, however, had a limited application by the Court. The physical evidence that is different from an interrogatory document has been accepted as competent evidence to establish a fact in a case based on the reason that the physical character can not be tainted by a violation of the due process. This newly introduced article is not as specific and detailed to clear out the entire dispute on the range of its application. But, the words 'in the violation of due process' signifies that any violations of the investigator in gathering evidence against a suspect shall not be tolerated. We

hope the court will fill the gap in this article.

1. D. Investigator's Testimony

The Article 316 of the Revised Act allows investigators to testify on the statement of a suspect. Previously the Korean Supreme Court has not allowed investigators to testify against suspects for fear that the defendant's power of defense would be severely damaged. During the deliberation of the revised article, a conclusion was reached that those interrogators' testimony is desirable if one considered the fact that the interrogators were to be under the cross-examination by defendants. If defendants take advantage of the cross-examination, they may find significant violations of due process and human rights

The Revised Act has more new stipulations and provisions in the process of trial, evidentiary rules, discovery procedure, bailment, judiciary review with respect to prosecutor's decision of non-indictment, etc. Those other stipulations are closely related to the investigation conducted by a judicial police officer and an investigating prosecutor. The Revised Act has several fundamental principles such as trial centered process, protection of human rights, due process, speedy trial, jury trial, etc. A criminal investigation shall be performed in the light of these principles.

2. Conscientious objection to military service

On 18 September 2007, the Defense Ministry announced its plan to allow conscientious objectors to perform social service instead of mandatory military service. The Ministry said it plans hold public hearings and opinion polls before revising laws governing the military service for conscientious objectors by the end of next year, and the revision is subject to the legislature's approval. The decision expected to take effect as early as January 2009 if approved. The Defense Ministry’s plans require conscientious objectors to reside and work in special hospitals and care for senior citizens, as well as the disabled, lepers and mental patients.

As of October 15, it is reported that 708 conscientious objectors are serving jail terms after being convicted with charges under the Military Service Act of 2003, while 131 similar cases are pending in various level of courts. Under the current law, all physically fit South Korean men ages 18 to 30 must serve at least two years in the military.

According to the Special Report published by the Human Rights Without Frontiers, total 12,324 conscientious objectors were convicted with jail-term from 1950 to 31 May 2006 and the total jail term awarded to them is 25,483 years. Out of these persons, 289 reportedly served jail terms twice on the same charge of failing to fulfill the mandatory military service.

It is also reported that more than 3,760 young South Korean men, mostly followers of the Jehovah's Witnesses Christian denomination, have refused to perform military service in the past five years, and nearly 95 percent of them served more than 17 months in prison.

The UN Human Rights Committee has maintained its clear view on the conscientious objection that nations in accordance with international law must allow citizens to practice their beliefs on matters of conscience, and that conscientious objection should therefore be respected.

In its Concluding Observations, the Committee expressed its concern that *"(a) under the Military Service Act of 2003 the penalty for refusal of active military service is imprisonment for a maximum of three years and that there is no legislative limit on the number of times they may be recalled and subjected to fresh penalties; (b) those who have not satisfied military service requirements are excluded from employment in government or public organizations and that (c) convicted conscientious objectors bear the stigma of criminal record (art.18)."*

The Committee also recommended that the Korean government "*should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with article 18 of the Covenant In this regard, the Committee draws the attention of the State party to the paragraph 11 of its general comment No. 22 (1993) on article 18 (freedom of thought, conscience and religion)."* – Para. 17, Concluding Observations of the Human Rights Committee, 28 November 2006, CCPR/C/KOR/CO/3)

In its view on the case of Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi, who were arrested in 2001 and charged under article 88(section 1) of the Military Service Act and finally convicted by the Supreme Court in 2004, the Committee also noted that *"under the laws of the State party there is no procedure for recognition of conscientious objections against military service (Para 8.4)"* and concluded that *"the facts as found by the Committee reveal, in respect of each author violations by the Republic of Korea of article 18, paragraph 1, of the Covenant. (Para.9)"* The Committee also stated that the Korean government "*is under an obligation to avoid similar violations of the Covenant in the future. (Para 10)"* – Human Rights Committee Views on Communications Nos. 1321/2004 and 1322/2004, 23 January 2007, CCPR/C/88/d/1321-1322/2004)

While the Defense Ministry's plan to allow the alternative social services to conscientious objectors is a great achievement, some concerns still remain. First, the period of social service is double than that of ordinary conscripts. This is against the views of the UN Human Rights Committee which consider that it is punitive when the period of alternative social service is more than one and a half times than that of ordinary conscripts. The Ministry also excluded men currently doing the military service from beneficiary of its plan. Besides, it does not guarantee the conscientious objection to the mandatory reserve forces training, which means the conscientious objectors are possibly punished again even after fulfilling social service. The Korean civil groups also shows its concern that the Ministry's plan tends to only consider the conscientious objectors based on religious reason as the beneficiary of the plan.

II. Major Human Rights Issues

1. Rights of Migrant Workers

The number of migrant workers is estimated to be over 420,000. It is estimated that some 224,000 out of the total migrant work force are undocumented workers. The Ministry of Justice publicised a policy that the Immigration office, which is under the MoJ, started arresting undocumented migrant workers and detaining them in a Protection Center before forcible deportation. It started its operation in August 2007. Several cases of human rights violation by immigration officials have been reported during its operation.

On August 20, immigration officers questioned 5 foreigners near Seong-su subway station. They did not show their identification when asked. Even though the five arrestees showed their document indicating legal status, the officers forcibly arrested them. During this process, the arrestees were assaulted. Bystanders called the police and all were brought to near the Seong-su police station. A lawyer went to the police station and asked to meet them but was denied access. Later, one of arrestees was charged with obstructing official duties.

Mr. Ayhya, an Indonesian migrant worker, went to Gyeongin Office of Ministry of Labour to report that the owner of his company did not pay his retirement allowance upon his leaving the company on August 20. He came to South Korea as an industrial trainee in 2000 and worked with the company for 7 years. However he was arrested for overstaying and detained. Likewise, migrant workers facing delays in payment or health problems in the workplace have, in practice, nowhere to report their existing problem.

Mr. Waleed, a Pakistan migrant worker, was working at a company in South Korea. Some immigration officers came into the company without a warrant on August 23 and Waleed was brought to their car. They forced him to sign a letter without informing him as to the contents of the letter. Waleed asked them to bring him to a hospital due to the pain in his ankle. However, they allegedly assaulted him and only later that evening took him to a hospital. The doctor examining his left ankle found it was broken and asked to admit him to surgery. However the police refused to admit him to hospital and took him to Mokdong Immigration office and later released him.

On August 28, Ms. Lee, a Chinese national, was arrested in a restaurant on the charge of an undocumented stay by the police from Seongnam Sujeong police station. She and her seven-month-old daughter were taken into custody and put in a so-called 'protection room' in Seoul immigration. She asked to go to a hospital because her daughter had a high fever due to enteritis but immigration officers refused and she was denied any medical treatment unless she could first pay a deposit for ten million Korean won (USD 10,780). As this case was well known and a protest was held, Seoul immigration firstly denied that they were detaining the mother and daughter but later her family verified the fact. Then Seoul immigration received three million Korean won (USD 3,230) from her husband as a deposit and they released the mother and daughter.

At the same time, the MoJ made an advance notice of legislation to revise Immigration

Act on 8 November 2007. Some of the major controversial articles of the revised act are reported below:

According to the article 46-2 of the revised act, immigration officials may enter an office, business premises, workplace or similar places if they have substantial reason to believe a foreigner violating under article 46-1 of the same act is on the premises. They can investigate foreigners, employers or relevant persons, and have the right access to necessary materials such as documents for employment or ask for their submission. This article empowers the immigration officials to enter any premises without a court warrant which is contrary to the stipulation in article 12 and 16 of the Constitution of the Republic of Korea.

In addition, according to article 63, the head of an office, branch office or that of foreigners' protection center may "protect" a foreigner who has received an order of forcible deportation in a foreigners' protection facility, center or a place where the Minister of Justice designates until they are able to deport them if they are unable to immediately deport them, for instance in cases where persons do not have a passport or a guaranteed means of transportation. The protection facilities are allowed to hold foreigners for up to 6 months and they must apply to the Minister of Justice to have this period extended before the 6 months expires. The Minister of Justice can allow for the extension of their term for another 6 months. This renewal process is in theory inexhaustible and foreigners can be held for an unlimited period of time as long as the Minister of Justice renews the order for their "protection". In practice this can lead to gross violations of the right to liberty and freedom from arbitrary detention.

As these have been reported, members of the Migrants' Trade Union (MTU) have started holding protests against the immigration officials' abuses in front of the Seoul Immigration Office every Tuesday for the last three months. Due to their activities, Mr. Kajiman Khapung (42), Nepali, President of the MTU, Mr. Raj Kumar Gurung, (38), Nepali, Vice-President of the MTU, and Mr. Abdul Basher M Moniruzzaman, (41), Bangladeshi, General-Secretary of the MTU have been arrested on 27 November 2007 and detained at Cheongju Foreigner's Protection Center waiting for their deportation. (For details, see: AHRC’s Urgent Appeal numbered UA-337-2007)

2. Rights of irregular workers

The issue of the irregular works is one of the most burning human rights issues in the year of 2007.

The Republic of Korea already has one of the highest percentages of irregular workers in its labour force. According to the statistics of Working Voice, a center for irregular worker, there are 8.5 million irregular workers in South Korea, accounting for 55 percent of the nation's entire workforce. Their monthly wages average is just 64 percent of what regular workers earn. Only 40 percent of them benefit from national health insurance and make contributions to the National Pension Fund. In this context, OECD and IMF have expressed a deep concern about the labour market conditions in South Korea and called for the government to act quickly to address the situation. To deal with

the problem, the Korean government has introduced new legislation titled “Irregular Workers Protection Law” that came into force on 1 July 2007.

In the process of introducing this Law, the Korean government ignored the recommendation of the National Human Rights Commission of Korea (NHRCK) which said that the bill should be re-drafted, that irregular forms of employment should be adopted only exceptionally and in a limited way, and that the principle of equal pay for equal jobs should be implemented in order to root out widespread discrimination against irregular workers.

Lawmakers in November 2006 passed three bills aimed at protecting the rights of so-called 'irregular workers', which include temporary workers and those who do full-time work but don't enjoy the benefits received by regular, full-time employment at large South Korean companies. The law, which went into effect on July 1, stipulates that companies must grant regular status to irregular employees after they have worked for the company for two years. In addition, if irregular labourers who work as much as regular employees experience discrimination in their salary or working conditions, they can report their cases to the Labour Relations Commission and then the employer who fails to comply with the order by the Commission have to pay 30 million won (approximately 33,500 US$) in a fine for default.

This law may be designed for goodwill, but there are great concerns that it contains several loopholes that may worsen the situation rather than protecting irregular workers.

As the first loophole to be found in this law, labour union pointed out that the law could be abused by employers, instead of protecting irregular workers, it would lead to mass dismissals as companies to avoid hiring them as regular workers. Before the July 1 implementation date, several companies fired irregular workers to avoid their wage-burdens and sought outsourced labour.

Secondly, there is no protection for irregular workers who report discrimination by their employers and no monitoring system to check whether discrimination has been made. Also, there is no legal arrangement and enforcement to redress any discrimination against irregular employees.

Lastly, it fails to restrict the scope of occupations that can use irregular workers. As the provision on the criteria of jobs for worker dispatching was re-worded, adding the new element "nature", the new law would result in a great expansion in identifying what kinds of jobs are allowed for worker dispatching and what kinds are not.

Besides, women are more vulnerable to the non-regular employment. According to the official source provided by the Ministry of Labour of the Republic of Korea (refer to Table 11-5. Scale of Non-regular Employment by Gender (as of 2004), CEDAW/C/KOR/6), out of the total number of women employees, women non-regular employees occupies 43.7%, while the men non-regular workers are 32.2%. The Human Rights Committee also expressed its concern on “the high number of women employed

in small enterprises who are categorized as non-regular workers". (Para 10, CCPR/C/KOR/CO/3)

Despite increasing concerns from various sectors including labour unions, the government was stick to legislate the law in the name of protection for irregular workers. Their worries transformed into reality just before the law went to effect. Even before the law went into effect July 1, conflict began to arise and the problem has become serious in small and medium businesses as they are trying to lay off irregular workers due to financial cause for higher wages and better working conditions.

A most prominent case illustrating the problem of irregular workers; rights would be the E-Land group (For details, see: AHRC's Urgent Appeal numbered UA-246-2007). According to the information received, due to a new labour law stating that irregular workers would automatically be granted regular status if they worked for a company for more than two years, a company called 'New Core Outlet' dismissed about 300 irregular workers before the law came into force and another company called 'Homever' dismissed at about 500 irregular workers after the law was enacted. Both are subsidiary companies of E-Land Group. Most dismissed workers were women, supermarket and department store cashiers and sales assistant workers of the company under the Group with very insecure employment conditions. After the mass dismissal, the E-Land Group substituted them with employees outsourced from temporary employment agencies.

Since July 1, the labour union at the E-land Group continued their sit-in protest at 'New Core Outlet' department store complex in central Seoul and 'Homever' in World Cup Stadium in Seoul until July 20 against the mass dismissal of irregular workers. The strike at the 'Homever' lasted for 21 days and the strike at the 'New Core Outlet' continued for 14 days.

On July 20, more than 7,000 policemen broke down reconstructed barriers set up by the striking workers and moved in to forcibly remove the striking workers from the store. The police took 169 protestors from the two companies to several police stations and they were released. Some workers were injured in the 30 minutes during this process. Only 9 days after the demonstration was broken up, members of the union once again started a sit-in protest at 'New Core Outlet' in Seoul, on July 29. The government sent its riot police again to crack down on the protesters from 'New Core outlet'.

Three core members of E-Land trade union, the president named KIM Kyung-Wook (37), the vice president Mr. LEE Nam-Sin and general secretary Mrs. LEE Kyung-Oak were arrested on charges of organising an illegal strike when riot police stormed picketing protestors. Moreover, other E-Land unionists are allegedly threatened to be arrested and huge individual compensation claims have been filed by the employer for business interference and losses incurred by the sit-in strikes.

According to the fact-finding report carried out by a various professors and lawyers regarding the workers' rights 12 July 2007, it is reported that E-Land has falsified employment documents with individual workers so that their contracts would not have to be transformed into a regular basis. The report says that E-Land management has

forced irregular employees to sign up under other people's names after having worked for a year in the company's stores. Also the workers were forced to sign for the contract without describing exact contract period, such as 'blank contract' (without filling out the period of contract) which is obviously illegal. Therefore, they are deprived of the chance to qualify for a regular contract after two years of employment, as provided by the new labour law.

Another good example is the Korea Railroad Corporation (KORAIL), the nation's largest public enterprise. On March 1, 2006, approximately 400 female train crews on the Korea Train Express (KTX), who are short-term contract employees, began a strike to demand the end of discriminatory and unjust outsourcing practices of the KORAIL. These female attendants were irregularly employed under outsourcing agreements, but KORAIL officials led them to believe that they would hired as permanent employees of KORAIL after one year. However, this promise was not met. Despite strong and long-last protest by the KTX female crews, KORAIL continued to refuse the union's demands for gender equality, safe working conditions and secure employment. On 2 July 2007, 31 union members then began a hunger strike.

The case of KTX does not only violate the workers' rights but also expose the discrimination against the women workers. It is reported that KTX women train attendants were subject to lower wages, harsher working conditions, and heightened job insecurity. The NHRCK stated that KORAIL must redress its 'gender discriminative employment structure.

Due to huge outcry from the civic society inside and outside the country, Labour Minister LEE Sang Soo and KORAIL CEO Mr. LEE Chul, agreed to turn the employment status of female workers to direct and permanent at the outsourcing company. However, the protesting KTX female crews turned down this agreement, demanding the direct and permanent employment by the KORAIL.

These two cases is a good examples of how the main purpose of the act is being disregarded and actually turned against irregular workers. It is predictable that other disputes like E-Land and KTX could occur if the new law is not revised and current disputes have not been solved.

Meanwhile, the government abused excessive force and forcibly cracked down on the irregular workers' protests in several occasions.

The AHRC is of opinion that the government should identify the primary causes of the labour strike and play an active role in providing a safety net so that companies cannot easily avoid the law. Also the government must come up with complementary measures by imposing restrictions on outsourcing and simultaneous, massive lay-offs by companies. In the meantime, companies should put more effort in embracing irregular employees to create an atmosphere for win-win cooperation with them.

3. Freedom of expression and National Security Law

Under the existence of National Security Law, the people of Republic of Korea have continued to suffer from freedom of expression. The HRC and Committee Against Torture (CAT) have expressed their concerns over the National Security Law (NSL) in their Concluding Observations in 2006.

Especially, the HRC concluded in November 2006 that prosecutions continue to be pursued, in particular under article 7 of this law. Under such provisions, the restriction placed on the freedom of expression does not meet the requirements of article 19, paragraph 3 of the ICCPR. So the Republic of Korea should as a matter of urgency ensure the compatibility of article 7 of the NSL, and sentences imposed there under with the requirements of the Covenant.

In addition, the CAT is concerned in July 2006 that specific provisions of the law remain vague and that ruled and regulations regarding arrest and detention continue to be applied in an arbitrary way. Therefore, the CAT recommended the Republic of Korea should continue to review the NSL to ensure that it is in full conformity with the Convention, and that arrests and detentions under the law do not increase the potential for human rights violations.

Regardless of several jurisprudences and concluding observations by HRC and CAT, the government of Republic of Korea has continued to apply the law without attempts to amend or abolish it and prosecution has continued.

Mr. Yu Byung-Moon, a spokesperson of Korean Federation of Student Councils (Hanchongyeon) had been wanted by the police since 2005 and arrested in 2007. On 6 September 2007 he was sentenced three years probation by Inchon District Court.

Hanchongyeon was a nationwide association of university students formed in 1993. The Supreme Court ruled that it was an "enemy-benefiting group" and an anti-State organization within the meaning of article 7, paragraphs 1 and 3, (2) of the NSL. However in the jurisprudence by the HRC in regard to individual communication of the case of Lee Jeong-Eun who was also a member of Hanchongyeon in 2005, the HRC concluded the government's violation and recommended the government to amend article 7 of the NSL, with a view to making it compatible with the Covenant.

Mr. Jang Song-Hei, a representative of Hanchongyeon arrested on charge of forming and joining "enemy-benefiting organization" was sentenced to three year probation by a District Court in September 2007.

Mr. Kim Gwang-Sun and Mr. Jo Seong-Bong serving mandatory military are receiving non-custodial investigation respectively on charge of having "enemy-benefiting materials" which is one of provision of NSL.

A professor, Kang Jeong-Gu was arrested on charge of violation of NSL by writing an article in 2005. On 13 November 2007, he was sentenced two years, stay of qualification for 2 years and three years probation by the Appeal Court.

Mr. Lee Si-Woo, an author and a photographer, was arrested on charge of leaking military and national secrets as well as for alleged violation of the National Security Law of committing acts benefiting North Korea by producing and contributing articles. However the book that he had published has old documents which are able to get from the U.S. State Department and the website of U.S. Department of Defense. He takes photographs to disclose the illegality of the civilian passage restriction line and the problems caused by the U.S. military bases in South Korea. He also alleged that more than 3 millions depleted uranium were stored in U.S. military bases. After arrest, he had hunger strike for 48 days in the custody. Now the case is pending.

It is reported that the number of arrest under the NSL is 152 since 2003. Even though the government of Republic of Korea has received several recommendations by the Committees with regards to NSL, it has continued applying for the NSL and not shown any sincere steps to amend or abolish NSL.

4. Restriction on the freedom of assembly

As the AHRC has already discussed in its 2005 Human Rights Report, the Korean government continues to maintain laws severely restricting the freedom of assembly. The government's revision bill for the Law on Assembly and Demonstration on 29 December 2003 severely restricts the Korean people's right to the freedoms of assembly and expression. There was reportedly no legislation announcement, nor was there 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 19 November 2003.

The main contents of the revision bill include: a) allowing police agency supervisors to ban street marches that may cause major traffic congestion on 95 roads in key cities across the nation; b) 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; c) allowing the police to ban a rally believed to substantially damage facilities such as public schools (e.g. 2,229 schools only in Seoul), foreign embassies and military compounds at the request of nearby resident(s); d) providing for the punishment of an organization and no more than six-month imprisonment/or fine of no more than fifty thousand Won of its speaker if the level of noise at any given demonstration exceeds 80 decibel volume prescribed by an executive order. (The volume of a normal conversation of two persons is around 60 decibel.) The AHRC expresses its views that the law violates Article 21 of the ICCPR, which recognizes the right to peaceful assembly.

Under the situation, rallies and protests were banned as illegal or severely restricted by the police in several occasions during the year of 2007. The police reportedly termed even peaceful demonstrations illegal and cracked it down by force in a few occasions. The protesters and human rights defenders are also easily exposed to legal action or harassment by police under this law. Such strict restriction or ban on the demonstrations and the police's abuse of excessive measures sometimes led the protesters to be violent,

in the demonstrations involving labour disputes and Free Trade Agreement between the Korea and United States.

5. Absence of definition of torture

There are various institutions such as Human Rights bureau under the Ministry of Justice, Human Rights Centre under the National Police Agency and NHRCK. However, law enforcement agencies responsible for acts of torture are punished under the name of 'misuse of power' or 'private assault' by the article 125 of Criminal Law not punished under the torture due to the absence of definition of torture in the Republic of Korea. In addition, a case of torture and inhuman or degrading treatment or punishment occurs in the prison, only 'mayhem' or 'general assault' applies for the prison officers.

The Committee Against Torture (CAT) has continuously pointed out the government bring the specific definition of the crime of torture to its domestic law however all acts of torture are not criminalized. However the government has not considered it.

6. No domestic mechanism to implement the international jurisprudences and laws

The Human Rights Committee (hereafter ' the HRC') has given ten jurisprudences to the Republic of Korea. Seven cases out of ten have been found violation under the International Covenant on Civil and Political Rights (ICCPR) since 1994. Those cases are Sohn v. Republic of Korea (CCPR/C/54/D/518/1992), Kim v. Republic of Korea (CCPR/C/64/D/574/1994), Park V. Republic of Korea (CCPR/C/64/D/628/1995), Kang v. Republic of Korea (CCPR/C/78/D/878/1999), Shin v. Republic of Korea (CCPR/C/80/D/926/2000), Lee v. Republic of Korea (CCPR/C/84/C/1119/2002) and Yoon & Choi v. Republic of Korea (CCPR/C/88/D/1321-1322/2004).

However, the Korean government has so far failed to provide substantial remedies for the victims except in an administrative work such as publicizing the HRC views translated into Korean and given response to the HRC such a domestic condition. Due to the failure, the authors of cases have been suffered from the lack of domestic mechanism to implement the views of the HRC or provide redress to the victims. In further, the government has stuck its position that there is no way to implement under the current legal system. At the same time, the NHRCK has criticized the government's position and recommended the government to establish a special law to implement to the views of the HRC. Stalemate of the government position has continued without sincere consideration to solve this problem existed in its legal system.

7. Other Concerns

In recent year, discriminative practice against the minorities in the society has been brought to light. The issue of the migrant workers are already mentioned the above. Another significant concern is the increased number of international marriages, which may lead to foreign women being trafficked into the Republic of Korea for purposes of

marriage and exploitation. The prevalence of domestic violence in such marriages should be also noted.

The UN Committee on the Elimination of Discrimination against Women urged the Korean government in its concluding comments "to speedily enact the draft law to regulate the activities of marriage brokers and to develop additional policies and measures to protect foreign women from exploitation and abuse by marriage brokers and traffickers, and by their spouses". The Committee also recommended the Korean government "to provide women with viable avenues of redress against abuses by their husbands and permit them to stay in the country while seeking redress". – Para. 21-22, Concluding comments of the Committee on the Elimination of Discrimination agains Women: Republic of Korea, 10 August 2007, CEDAW/C/KOR/CO/6

Besides, there are concern about the abuse of sexual minority in the military and discrimination against the disabled.