

NGO Report on the Situation of Freedom
of Opinion and Expression
in the Republic of Korea since 2008

April 2010

Joint Korean NGOs

for the Official Visit of the Special Rapporteur

to the Republic of Korea

Greeting Speech

Mr. Frank La Rue, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, is officially visiting Korea on May 2010. In light of his visit, Korean human rights social organizations have prepared the “Report on the Realities of the Freedom of Expression, Two Years into the Lee Myeong-Bak Administration.” The Korean human rights social organizations greatly welcome the Special Rapporteur’s visit of Korea, and support and feel solidarity in his activities to protect human rights.

This is the second time that a UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has officially visited Korea since Mr. Abid Hussain in 1995. After visiting Korea, Mr. Abid Hussain advised △ abolition of the National Security Act △ release of prisoners incarcerated for their exercise of freedom of expression △ revision of Trade Union Act and Labor Relations Adjustment Act, through the “Report on the Freedom of Expression in Korea.” Notwithstanding the 15 years that have passed since then, the freedom of expression in Korea is at a critical state.

The National Security Act which was advised to be abolished since 15 years ago is still in effect. People who exercise freedom of expression are receiving criminal penalties through alleged crimes of defamation, obstruction of work, and violation of Assembly and Demonstration Act. Also, the government is covertly and tactfully performing censorship online, further repressing the freedom of expression. This is why, in light of Mr. Frank La Rue’s official visit, Korean human rights social organizations have written the “Report on the Realities of the Freedom of Expression, Two Years into the Lee Myeong-Bak Administration,” in order to spread the word on the realities concerning the freedom of expression. Human rights social organizations hope that this report will assist Mr. Frank La Rue in his investigation. This report will be made public during the general meeting of the report to be held on April 28 in Korea.

Out of the many realms of human rights, the freedom of expression is an important index which crucially influences other freedoms and human rights. The freedom of expression is like a “messenger” that tells us that other human rights are being repressed. We can undoubtedly see that other human rights are in retreat through the limits in freedom of assembly and demonstration in the 2008 candlelight protests, the criminal charges pressed against public officials when they expressed their position on the retreat in freedom of expression, and the tyranny of governmental authority in gagging the internet. This report has tried to include such realities of the retreat in freedom of expression during the two years since the Lee Myeong-Bak administration.

The report consists of 12 chapters: an introduction and 11 fields in the freedom of expression. The first chapter is an introduction which analyzes the general realities of the freedom of expression in the current administration. The second chapter deals with violation of the freedoms of thought and conscience shown in the examples of National Security Act, crime of defamation, and designation of seditious books by the

military. The third chapter talks about the violation of the freedom of speech and the freedom of expression through video and literature. Examples include attacks and criminal charges against journalists, destruction of diversity in media through the Media Act's change for the worse, and violations of the freedom of expression in films and literature. Chapter four handles the laws, customs, and examples that violate the freedom of assembly and association, and chapter five deals with the realities in violation of freedom of expression for laborers. The sixth chapter talks about how the direct and indirect censorship through strengthened administrative regulations and criminal penalties retreats the freedom of expression on the internet, and the seventh chapter, on the right to know and right of access to information, handles the limits in access to public information and media. The report also deal with the realities for those incarcerated on grounds concerning the freedom of expression (chapter 8), youths (chapter 9), disabled (chapter 10), and sexual minorities (chapter 11). Finally, the twelfth chapter shows how the decreasing independence of the National Human Rights Commission is compromising the role that the Commission plays in protecting the freedom of expression.

The above outline of the report is a summary of whether the Korean government has carried out recommendations that it has received for the past 15 years by the UN Human Rights Council (international agreements on civil and political rights; international agreements on economic, social, and cultural rights; and Final Opinion on the Korean Government Concerning the Ratification of Convention on the Rights of the Child); the "Report on the Freedom of Expression in Korea" by Mr. Abid Hussain; 2008 UPR recommendation to Korea; and the ILO recommendation. Also, the report deals with laws and systems, customs, and examples that constitute violations of rights, and tries to objectify the violation of rights from data collected through public information inquiries.

The official visit of Mr. Frank La Rue has given Korean human rights social organizations a definite opportunity to contemplate what must be done to promote the freedom of expression. During the course of two meetings (March 11 and April 21) where around 30 people attended, the represented social organizations were able to increase understanding of 'freedom and equality of expression' and 'UN human rights procedures.' Also, the organizations sought joint activities such as preparing the Report. We greatly look forward to the promotion of the freedom of expression, and the organization of activities for such promotion during the official visit of the Special Rapporteur.

Thank you.

Preface

On the occasion of the Country Visit of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Republic of Korea from 5 May 2010 to 15 May 2010, the Joint Korean NGOs for the Official Visit of Special Rapporteur has been preparing its report in order to not only aid the Special Rapporteur in obtaining a correct understanding of the situation of freedom of opinion and expression in the Republic of Korea, but also to bring the attention of the Special Rapporteur to those issues which Korean NGOs believe should be investigated during the mission of Special Rapporteur.

We sincerely hope that the Special Rapporteur will take into consideration the remarks and recommendations presented in this report prior to the Country Visit to the Republic of Korea.

The 23 NGOs participating in the preparation and submission of this report are as follows:

Joint Action of NGOs on NHRCK ((NHRI Watch-Korea), Catholic Human Rights Committee, Chingusai (Korea Gay Man's Human Rights Group), Coalition of Human Rights NGOs in Korea & Human Rights Defenders, Disability Discrimination Act of Solidarity in Korea, GONGGAM (Korean Public Interest Lawyers' Group), Information & Culture Nuri for the Disabled Korea, KCTU (Korean Confederation of Trade Unions- Korean Government Employees Union, Korean Teachers and Education Workers Union, National Union of Media Workers, Korean Railway Workers Union, Korean Construction Workers Union), Jinbonet (Korean Progressive Network), Korea Press Consumerism Organization, KOCUN (Korea Center for United Nations Human Rights Policy), MediaACT (The Media Center 'MediACT'), MINBYUN (Lawyers for a Democratic Society), Minkahyup (Human Rights Group), PSPD (People's Solidarity for Participatory Democracy), SARANGBANG Group for Human Rights, Writers Association of Korea, Youth Human Rights Activists' Network, The Center for Freedom of Information and Transparent Society(CFO),Committee to Support Imprisoned workers.

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CHAPTER 1. INTRODUCTION

As a whole, the freedom of opinion and expression in Korea is confronted by a dire crisis. With a conservative administration taking power in 2008, control and surveillance of internet and labor unions has now reached an extreme level. Restrictions on broadcast media and the press have also grown extensive. Moreover, government has made explicit attempts to damage the independence of the judiciary in order for the present administration to gain full control over the judicial branch. The absurdity of the present reality merely intensifies when we view the current administrative power attempting to infuse political views into religious organizations and educational institutions. The government is persistently enforcing omni-directional regulation on general freedom of expression and freedom of assembly and association. Such regulation has been successful in incapacitating the anti-government voices of civil society and financially supporting only organizations with a governmental source. All of these misdeeds have been committed in the name of ‘rule by law’ disguised as ‘rule of law’. The coordinated efforts of the ‘Red Hunt’ continue even now at this very minute—retrogressing freedom of opinion and expression in Korea to an inconceivable level. In the last two years especially, the severity and rapidity of the regression have become increasingly desperate.

Korea went through 35 years of Japanese colonialism starting from 1910. The Korean War, which broke out in 1950, literally ruined the country and a military coup of 1961 followed those devastating days. Since that time, military dictatorship continued in Korea for 30 years until the 1980s when the country achieved partial economic development through the complete suppression of freedom and civil rights. It was only in the late 1980s when democracy and human right began to strengthen and come into the spotlight. The 1980 Gwang-Ju Democratic Resistance (a pro-democratic struggle that occurred amidst martial law and resulted in casualties of more than 2,000) and the June Democratic Resistance in 1987(a pro-democratic struggle that established a direct presidential election system in Korea) were efforts to bring democracy into the country. However, the Korean government retained its control over civil society based on justifications of national security and economic development. North Korea served as an effective excuse for the government to brand any voice critical of suppressive government activities as ‘the Reds’. In spite of the continued government suppression of civil freedoms even after the June Democratic Resistance of 1987, the scope of democracy and human right gradually expanded in Korea thanks to active movements in the respective fields.

Infringements on freedom of opinion and expression in South Korea reveal the following trends. First and foremost, the National Security Act remains in full effect despite the recommendation in 1996 of the UN Special Rapporteur on the freedom of opinion and expression to abolish the act. The National Security Act is a symbol of the repression of democracy and human rights which is founded on McCarthyism and the ‘Red Hunt’. Recently, there has an increase in the number of cases in which criticism of government policy is punished as a criminal act of defamation against the public officials. Journalists and Netizens are charged with

defamation if the government views the writing as unpleasant in any way. Civil and criminal complaints from organizations and individuals holding pro-government inclinations are also flooding the nation. Any opinion or expression that does not align itself with government policies are blocked and controlled by the government. Such suppression is carried out by fully mobilizing public, private, human and material resources and using 'the law' which itself has been degraded to nothing more than a weapon of loyalty to figures of authority.

Secondly, South Korea has been described as the 'most wired' country in the world in terms of internet facilities. However, the Korean government apparently does not view cyber space as a place for the free communication of opinion and expression but rather as a potential crime scene. As such, the objective of the government is to utilize our nation's highly developed technology infrastructure to become the 'most controlled' country. The Korean government now requires the Korean people to list provide a Resident Registration Number in any case where they exercise their rights. Anonymity of web users and Netizens is now threatened by the government's strict application of the internet 'Real-Name Registration' system regulating internet posting procedures. Ultimately, these kinds of regulation create a chilling effect on the exercise of people's freedom and direct or indirect self-screening practices.

Thirdly, the government is resorting to the use of excessive force when it comes to the assembly of workers, peasants, and homeless people in the exercise their right to live. Also, groups of people and citizens or human right activists who demonstrate for the free exercise of their basic rights suffer criminal punishment for obstruction of duty and violation of the Law on Assembly and Demonstration. Rather than carrying out its responsibility to collect diverse opinions on social issues and mediate existing tensions, the government denies the existence of such opinions and tension by labeling the socially weak as the 'social unrest element' or the 'conflict inducing factor'.

The rapidly retrogressing state of freedom of opinion and expression in Korea is not a problem that should be left to the Korean people alone but constitutes an urgency that demands international attention. The situation in South Korea perfectly demonstrates an example of how an economically-advanced democratic nation can run afoul of true democracy in the name of 'law and order.' The continual 'Red Hunt' and other ideological branding are especially helpful to the Korean government in achieving its purposes. And it again confirms how the uses of cyber space are easily distorted from its original purpose of free expression to a space in need of extreme control. The Korean government has proven itself capable of utilizing systematic and elaborate governing skills in comprehensively branding all criticisms of the government and suggestions concerning pressing social issues as the work of the rebellious elements of society. These 'rebellious elements of society' are subsequently regarded as grave threats to national security and social stability, leaving the people with no option but to align themselves with government measures. The Korean government does not appear to have even a minimum awareness of the significance and meaning of freedom of opinion and expression. What has become a hotly debated issue in Korea is not the restriction on freedom of opinion and expression itself, as is

the case in most other countries, but the very fact that negative opinion and expression on governmental policies has come to be regarded as a subject of disapproval. Moreover, what has become an issue in Korea is not the protection and safety of journalists working in conflict zones but the daily suppression of their article writing and reporting. The right of access to information is brought into question in reference to extreme poverty but in everyday life whereby the government exerts excessive control on individual information.

The 'model of Korea' can now be better understood as the worst model or even a 'disaster'--which any authority would desire to possess. The Korean example shows that there is not much difference between transitional, or even long-established, democracies and despotic states when they desire such authority. This is the very reason why the cases of infringement on the freedom of opinion and expression in Korea should be accurately collected, analyzed and critically investigated for the good of the public.

The Report consists of 12 chapters providing basic facts and background about many selected cases of human rights violations relating to freedom of expression that have taken place in Korea under the current Lee Myung-bak government since Feb. 2008.

The report is divided into four clusters; the first cluster (Chapter 1-3 and 7) describes about human rights situation according to the four basic pillars of freedom of expression – freedom of thought and conscience, freedom of opinion and expression in particular press freedom and freedom of assembly and association, and right to information.

The second cluster (Chapter 4-6) is about freedom of expression in two areas – work place and cyber space - where human rights violations are taking place in a daily basis.

The third cluster (Chapter 8-11) explains about human rights violations facing various social groups such as detainees, youth persons with disabilities and sexual minorities which are considered most vulnerable and suppressed. Special Rapporteur is expected to meet those groups to gather more first-hand information during his visit to Korea

The last cluster (Chapter 12) is about the NHRCK whose independence and effectiveness has been put into question since the appointment of Byung-chul Hyun, current chair of NHRCK in July 2009 after the organizational downsizing in April 2009.

CHAPTER 2. FREEDOM OF THOUGHT AND CONSCIENCE

2-1. Overview

The former Special Rapporteur to the UN on Freedom of Thought and Expression, Abid Hussain, advised the abolition of the National Security Act in the report filed after his official visit to Korea in 1995 (E/CN.4/1996/39/Add.1). He made the recommendation on the grounds that the Act violated the Universal Declaration of Human Rights and international treaties concerning civil and political rights. Nevertheless, the National Security Act continues to limit freedom of thought and conscience in Korea, and cases involving activities considered to be violations of the Act are increasing in number under the current administration. There have been numerous examples where voices criticizing the nation or a public figure were suppressed. The National Intelligence Service (hereinafter, “NIS”) filed a civil suit with “the nation” as plaintiff against an executive of a civil organization who exposed NIS investigations into private organizations, claiming that the executive defamed the nation. Also, public officials who released declarations of conscience were expelled or had disciplinary measures taken against them in some other manner. Especially during the current administration, the beliefs and expression of unions and civil organizations that are not aligned with government policies are being strongly restricted. In 2008, the National Defense Ministry designated 23 books as seditious, including a book by the world-renowned scholar, Avram Noam Chomsky. Several military judicial officers filed a constitutional claim against the designation and two were expelled, infringing upon the officers’ right to know and academic freedom, as well as violating their freedom of conscience and thought.

2-2. Problems concerning the National Security Act and Resulting Violations

The National Security Act is an unjust act serving the administration by oppressing the people’s freedoms of thought, expression, and conscience under the pretence of “protecting the nation” after the separation of the two Koreas. Gradual or immediate abolition of the Act has been continuously advised in the following: the 1992 final report on the Korean government by the UN Human Rights Committee; the 1995 report on Korea by the Special Rapporteur to the UN on Freedom of Thought and Expression; the 1999 final report on the Korean government by the aforementioned committee; and the 2008 UPR report on the Korean government. The number of violations charged under the Act had been decreasing since 2000, but from the start of the current administration in 2008, the number has grown, showing an increase in the application of the Act.

<Table 2-1> 2008~2009 Number of Indictments and Imprisonments under the National Security Act

| | No. of Charges | No. of Indictments | No. of Non-indictments | No. of Imprisonments | Other Results |
|------|----------------|--------------------|------------------------|----------------------|---------------|
| 2008 | 46 | 32 | 10 | 16 | 4 |
| 2009 | 57 | 43 | 9 | 18 | 5 |

*Source: Supreme Prosecutors' Office

<Table 2-2> 2008~2009 Applied Articles of the National Security Act

| | Total | Constitution, etc. of Anti-Government Organization (Article 3) | Accomplishment of Purpose (Article 4) | Infiltration and Escape (Article 6) | Benefiting the Enemy (Article 7) | | | Meeting, Correspondence, etc. (Article 8) | Offer of Convenience (Article 9) | Non-Information (Article 10) |
|------|-------|--|---------------------------------------|-------------------------------------|----------------------------------|--|---|---|----------------------------------|------------------------------|
| | | | | | Praise and Incitement (Clause 1) | Enemy-benefiting Organization (Clause 3) | Enemy-benefiting Expression Material (Clause 5) | | | |
| 2008 | 46 | 1 | 3 | 5 | 2 | 20 | 13 | 0 | 2 | 0 |
| 2009 | 57 | 0 | 4 | 8 | 2 | 21 | 21 | 0 | 1 | 0 |

*Source: Supreme Prosecutors' Office

Representative examples include: the case of the Solidarity for Practice of the South-North Joint Declaration (September 27, 2008; hereinafter, "Solidarity") on; the case of the Socialist Workers League of Korea (February 2008; hereinafter, "League"); and the case of the South Headquarters of the Pan-National Alliance

for the Unification of Korea (May 7, 2009; hereinafter, “Alliance”) when the NIS and the Security Investigation Division of the National Police Agency launched joint operations.

The Solidarity was created in 2000 for the peaceful unification of the two Koreas. It was registered with the Unification Ministry and all its operations were carried out openly and publicly. However, the prosecution imprisoned six people under Articles 7(1) and 7(3) of the National Security Act. In the process of arrest and imprisonment, some were not served warrants for search and seizure, and some families were confined to a room during the search and seizure of 25 locations. In the League case, prosecutors requested an arrest warrant for seven members on the grounds that they created an Anti-Government organization and propagated and incited an uprising against the government. The request was denied for all seven members in less than 50 hours for lack of evidence. The Alliance case imprisoned and oppressed six members for joining an enemy-benefiting organization, specifically: infiltrating and escaping, meeting and corresponding, as well as praising and inciting. During the process, a 72-year-old man missed an appointment for a medical examination and treatment at a hospital and was subjected to interrogation while being denied access to a lawyer. Also, court proceedings revealed the fact that the NIS and Security Investigation Division had been illegally intercepting the organization.

Other cases that utilized the Act include that of the online commentator, Mr. Yang; that of Mr. Jo, who was charged with posting and distributing enemy-benefiting expression materials; and the owner of an online bookstore, Mirbook.

The former Special Rapporteur to UN on Freedom of Thought and Expression, Abid Hussain, advised the abolition of the National Security Act. Now 15 years has passed, the Act remains in place, and the freedom of expression and personal freedom are still repressed in Korea.

2-3. Violations of Rights and the Alleged Crime of Defamation

1. The National Interest Service sues the Director of the Hope Institute, Park Won-soon, for Two Hundred Million KRW in Damages

On June 10, 2009, Park Won-soon, director of the Hope Institute, exposed in an interview with the Weekly Kyunghyang the National Intelligence Service’s (hereinafter, “NIS”) practice of investigating civilians. The NIS then sued the director with “the nation” as plaintiff for KRW 200 million in damages for defaming the “nation” with false information. On September 22, 2009, 15 civil society organizations including the People’s Solidarity for Participatory Democracy, the Korea Federation for Environmental Movements, and the Korean Women’s Association United, strongly criticized the nation’s suit against Park and deemed it “unprecedented,” calling it a “declaration by the administration that it will not coexist with civil society.” “In

the past, the NIS incarcerated people and organizations critical of the administration. The NIS of the 21st century investigates and exerts its influence on civilians by pressuring their financial affairs, and furthermore responds to people and organizations critical of the administration by suing them.”

2. Section Chief Kim Dong-II of the Naju District Tax Office

On May 28, 2009, Section Chief Kim Dong-II of the Naju District Tax Office wrote an online post titled “I Know What the National Tax Service Did Last Summer” on the National Tax Service (hereinafter, “NTS”) website criticizing that the tax investigation into Taekwang Industry Co., conducted by the former Commissioner of NTS, Han Sang-Yool, was politically motivated and that it led to the death of former President Roh Moo-Hyun. On June 15, 2009, the Gwangju Regional Tax Office expelled him on the disciplinary ground that he defamed NTS and other public officials. In response, the civil organizations of Gwangju Metropolitan City emphasized that “NTS is receiving public criticism that it conducted a tax investigation intended as a political retaliation. It should not expel the public official who called for the self-examination of the NTS, but should reflect on its own actions and make a public apology if it did do wrong.” “We urge the NTS to break free from the sanctuary of the administration and capital, reform itself, and become an institution for the people.” Kim filed an appeal to the Ministry of Public Administration and Security, and it decided to lighten the disciplinary measure from expulsion to dismissal on January 15, 2010.

3. Kim I-Tae Blows the Whistle on the Grand Canal Project

Kim I-Tae (46) was a researcher for the Korea Institute of Construction Technology who studied the Lee administration’s plan to build a canal system in Korea. On May 23, 2008, he wrote an online post titled “I am a Researcher Involved in the Grand Canal Project” on “Agora”, an online discussion forum, revealing that “the plan to connect the waterways and maintain the four main rivers of the Korean Peninsula is to build a canal in the end.” The institute officially stated that Kim would not be punished, but convened a disciplinary action committee and suspended Kim for three months. In response, a board was created on Agora as a campaign to seek signatures for the “protection of conscientious declaration Kim” and approximately 500 people joined in less than two days. The People’s Movement to Nullify the Canal Plan, comprised of 389 civil society organizations such as the Korea Federation for Environmental Movements, issued a statement: “Kim had to make a conscientious declaration to preserve his conscience as a scholar. He should be protected and we will work with citizens to see that no harm is done to Kim who made a courageous decision.”

4. Constitutional Appeal Filed Against the Designation of Seditious Books by the Ministry of National Defense

On July 22, 2008, the Ministry of National Defense sought to “block seditious books in the army” under instructions from the Minister. It conducted psychological education of military personnel and inspected all personal effects. Twenty-three books were designated as seditious books according to the four criteria of praising the DPRK, anti-government, anti-U.S. and anti-capitalism. Such books were not to be allowed in the military. Seven military judicial officers filed a constitutional complaint against the President and Minister of National Defense on the grounds that they had violated their right to know, academic freedom, freedom of conscience, and the right to pursue happiness, as basic rights provided under the Constitution. The Ministry said that the plaintiffs did not adhere to the regulations defining the services of military personnel and did not follow the suggestion procedures within the military. Two of the seven officers were expelled, and the others either had their pay cut or received probation. On April 16, 2009, 50 former military judicial officials, currently working in the legal profession, sent a petition to the Ministry stating that it was unfair to take disciplinary action against officers who filed a constitutional complaint against seditious books in the military. They argued that “although authority of the law should be respected, authority can be abused, and the officers saw it as their duty to right this abuse, and this is not a violation of an order.” In October, the National Human Rights Commission (hereinafter, “NHRC”) submitted to the Constitutional Court an opinion that the designation of seditious books violates human rights such as the freedom of conscience and freedom of information that are provided under the Constitution. The NHRC stated that “choosing and reading a book is a basic right that a rational and conscience human being should have” and “in this area of freedom and right, the fundamental request of a human takes precedence over the position as a military officer in uniform.” It also said that “Article 47(2) is the basis for designation of the seditious books, but this act violates the Prohibition of the Comprehensive Delegation of Rights under the Constitution.” “Even if not in the context of obligations and security within the military, regulating which books not to read is not within sound common sense of the average citizen.” Currently, a ruling is due in an administrative suit concerning the Ministry’s expulsion and in a constitutional complaint to the Constitutional Court.

On April 23, the Seoul Administrative Court dismissed all constitutional law suits except for that of one long-term military judicial officer who had his discharge revoked. The court reasoned that “although military judicial officers have the right to file constitutional suits, they did not fully fulfill their duty to obey their superior’s commands and orders which is stated under law.” “They went further from trying to receive a constitutional decision, to intending to nullify commands and orders through constitutional suits. Therefore there are grounds for disciplinary action.”

5. Recommendations

As we have seen in the cases above, the clock of freedom of thought and conscience in Korea is turning backwards. The National Security Act, the abolishment of which was advised by the Special Rapporteur to the UN on Freedom of Thought and Expression 15 years ago, is now being increasingly applied. Voices critical of

the nation and public figures as well as opinions based on conscience are being suppressed by the government and public power. This is why we request that the Special Rapporteur recommend the following to the Korean government:

- The Korean government must abolish the National Security Act as soon as possible and release political prisoners of conscience imprisoned under the Act.
- The Korean government must withdraw the suit against Director Park Won-Soon and the disciplinary action taken against researcher Kim I-Tae and the military judicial officers. It must also provide measures to compensate for the mental and material damages that arose from the disciplinary actions. Finally, the government must recognize that defamation suits cannot be filed on behalf of the nation or public figures, and must discontinue such suits previously taken on grounds of defamation and contempt.

2-4. [Appendix] Seditious Books by the Ministry of National Defense

| No. | Title | Author |
|-----|---|--|
| 1 | North Korea's Missile Strategy | Yeong-Ho Jeon |
| 2 | North Korea's Cultural Similarities | Kang-Hyun Joo |
| 3 | A Spoon on Earth | Gi-yeong Hyeon |
| 4 | History Has Never Escaped My Grip | Young-Cheol Huh |
| 5 | Why is 80 Being Ruled by the 20? | Joon-Sung Park, Geun-Mo Ahn, Im-Ha Lim, Tae-In Cheong, Jeong-Gang Hah, Se-Hwa Hong |
| 6 | North Korea's Economic Development Strategy | Yeong-Ho Jeon |
| 7 | Unification, the Last Blue Ocean for Our Nation | Sang-Bong Jeon |

| | | |
|----|---|---|
| 8 | Friend | Nam-Ryeong Baek |
| 9 | What Uncle Sam Really Wants | Noam Chomsky |
| 10 | During the College Days | |
| 11 | Nuclear Weapons and the Korean Peninsular | Ahn-Ook Choi |
| 12 | Crimes by U.S. Troops and Korea-U.S. SOFA | Movement to Stop Crimes by U.S. Troops in Korea |
| 13 | Salty Flowering Tree | Jin-Sook Kim |
| 14 | Blood Runs Inside the Flower | Nam-Ju Kim |
| 15 | Year 507: The Conquest Continues | Noam Chomsky |
| 16 | Story of Our History | Sung-Oh Cho |
| 17 | Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism | Ha-Joon Chang |
| 18 | Critical Biography of Nam-Ju Kim | Dae-Suk Kang |
| 19 | Story of Philosophy in th 21st Century | Corea Institute |
| 20 | History of South Korea | Hong-Gu Han |
| 21 | Our Lord | Jeong-Sang Kwon |
| 22 | Die Globalisierungsfalle | Harald Schumann, Hans-Peter Martin |
| 23 | Guerrillas of the Samsung Kingdom | PRESSian |

CHAPTER 3. PRESS FREEDOM, MEDIA DIVERSITY AND FREEDOM OF EXPRESSION CONCERNING VISUAL IMAGES AND LITERATURE.

3-1. Overview

So far, the Lee Myung-Bak administration and the ruling party have pursued quantitative growth of the press through maximizing market competition rather than securing press publicity. At the same time, it has made consistent attempts to control the press since its early days in office as they attributed the total failure in the previous presidential election to terrestrial broadcasting. Control of press governance has been made possible through appointing the President's candidate-year special advisers as CEOs of major broadcasting companies such as KBS, MBC and YTN including the chairman of the Korea Communications Commission, the representative organization that establishes broadcasting policy. Furthermore, the Lee Myung-bak administration and the ruling party has both substituted cast members and abolished programs that voice opinions critical of the government. A program titled "PD Notebook" of Munhwa Broadcasting System (MBC) was also listed on the blacklist and others were prosecuted for charges such as defamation and obstruction of duty. Moreover, the Lee administration has amended the Media Law in a way which carries a great risk of controlling and regulating the press. The amendment of the law secured a systematic method by which press diversity is severely damaged through downsizing of the public sphere and easing the outflow of capital. Meanwhile, the systems of 'restricted showing rate' and 'theaters for limited access films' have heavily invaded freedom of expression and the right of individuals to enjoy cultural products by carrying out legal and administrative regulation of visual images. Their systematic control has efficiently defeated any effort to create and enjoy visual images.

The repressions were imposed in various ways like targeted suppression to AWNL's representative writers and the legal sanctions to the minor issues. The works of the novelist Hyun Ki-young and the poet Kim Nam-joo were classified as banned books and the poet Song Kyung-dong, who recited poems in the funeral of Yongsan tragedy, was accused. The other poet, Hwang Ji-woo was urged to resign the position of Korea National University of Arts. A novelist Kim Nam-il is being accused as he published a book containing the critical comments to the government.

3-2. Enforcement by Assault and Criminal Penalty against Journalists

1. The Arrest and Prosecution of the <PD Notebook> Production Crew and the Taming of MBC

On April 18 2008, Korea-US FTA negotiation reached a settlement. The long-pending controversy over mad cow disease was finally settled after going through an extensive negotiation lasting 8 days. Permission for importing beef from cattle aged over 30 months was also included in the settled agreement--which provoked a debate over rough-and-ready negotiations. President Lee Myung-bak intensified the opposing public opinion by describing US beef as “cheap and high quality beef”. The PD Notebook, an MBC program that deals with current affairs, directly raised the issue of beef negotiations when it aired ‘US Beef, Are We Really Safe From Mad Cow Disease?’ on April 29 and ‘US Beef, Are We Really Safe From Mad Cow Disease? (Part 2)’ on May 13. Witnessing the exploding national resistance, President Lee Myung-bak released a national statement on May 22, expressing his regret over the status quo. Stating that he literally felt sorry for the controversy that built up over the beef negotiation, President Lee Myung-bak delayed the previously scheduled import start-date of June 2. Despite the continuance of additional negotiations, arguments surrounding the deal still persisted and snowballed. The <PD Notebook> again raised doubts over government negotiation by airing ‘Coverage of a Breaking News: What did we gain from the additional beef negotiations?’ on June 24. Also, by that time, candlelight demonstrations against the import of US beef reached their peak, violently stirring public opinion.

But this was when the government started launching omni-directional offensives against the <PD Notebook>. The Ministry for Food, Agriculture, Forestry, and Fisheries made a request to the prosecution for a police investigation on June 20, under charges of defamation and obstruction of duty. On July 14, the Ministry requested the Korea Communications Standards Commission for set restrictions regarding the matter. The Seoul Southern District Court ruled on July 31 in favor of the plaintiff in the final trial in which the Ministry for Food, Agriculture, Forestry, and Fisheries filed a suit against <PD Notebook>. The Ministry’s claim requested a report that would include a corrected statement and a counter statement on partial mad cow coverage. The decision was followed by an MBC news broadcast of an apology on August 12 and replacement of the production crew of the relevant program. Lim Su-bin, the Chief Prosecutor (Criminal Division 2, Seoul Supreme Public Prosecutors’ Office) in charge of the investigation, resigned on January 7 2009. His resignation was based on the belief that a defamation charge is not necessarily established just by MBC’s distortion of partial facts. Unreasonable investigation methods practiced by prosecution again became the object of public criticism but more severe actions followed: publicizing the personal email address of the free lance writer, search and seizure of the production crew’s houses, and the arrest of the previous chief producer Jo Neung-hee, producers, such as Song Il-jun, Kim Bo-seul, and Lee Chun-geun, and writers such as Kim Eun-hee and Lee Yeon-hee. Particularly, producer Kim Bo-seul was abruptly arrested in front of her mother-in-law just two days before her marriage.

Later on, the prosecution demanded 2-3 years imprisonment for the <PD Notebook> producers on December 21 but the court found all the production crew innocent at the first final trial held on 2010 January 20. The verdict was rendered in accordance with the following reasoning: a) “if there exists a sufficient and reasonable

cause for suspicion, the coverage of relevant information belongs to the sphere of press freedom”; and, b) although the social evaluation of public officials may be deteriorated, defamation charges are not immediately established. The prosecution has appealed the court’s decision, and a second trial is expected. On the other hand, the Lee Myung-bak administration and the ruling party have carried out massive control over <PD Notebook> and other programs that voice social criticism since they held the press responsible for the failure of the Grand National Party in the previous presidential election. Seizure of press power was realized through substituting members of the Foundation for Broadcast Culture (FBC) with the supporting forces of the ruling party. The government further went on to press the president of MBC, Eom Gi-young, to resign from his position—only to appoint a pro-government personnel as the new president. Moreover, a scandal spilt out during an interview of the FBC chairman of the board, who is also one of the major shareholders of MBC, when it was revealed that there was an undeniable intervention of government authority in the MBC presidential selection process. Consequently, MBC is currently undergoing crippled operation and severe social criticism in Korea.

2. Firing the President of Korea Broadcasting System and Appointing a New President from Former President’s Special Advisers

On March 26, 2008, Choi Shi-joong, who formerly worked as a special adviser of President Lee Myung-bak during his candidate years, was appointed as the Chairman of Korea Broadcasting System (KBS). Immediately following his inauguration, Choi Shi-joong met with Kim Geum-soo, then the Board Chairman of KBS and stated that KBS is wholly to blame for the decrease in the approval rating of the President. He required the resignation of Jeong Youn-ju, then the president of KBS as an adjustment measure. In this process, Board Chairman Kim Geum-soo voluntarily resigned and Shin Tae-sup, a member of the KBS Board of Directors, was dismissed from his post. Shin Tae-sub previously worked as a professor at Dong Eui University but he was also dismissed from his professorship for the reason that he performed as a director without obtaining advanced approval from the president of the university. Furthermore, the Korea Communications Commission notified Shin that he had been disqualified to remain as a board member of KBS because he had been dismissed from his professorship. After the reorganization of the board of directors took place, the prosecution investigated Jeong Youn-ju, then the KBS president, on charges of malpractice and the Board of Audit and Inspection of Korea proceeded with a special inspection. The Board of Audit and Inspection of Korea concluded that Jeong should be dismissed due to his poor management of the company.

On August 8, 2008, the KBS board of directors broadly interpreted the broadcast law that only provides for the appointment of the KBS president so as to guarantee the independence of the broadcasting system. The interpretation resulted into a unanimous agreement of the KBS board of directors to dismiss Jeon Youn-ju, the KBS president. Despite the internal opposition of KBS members, the board of directors appointed Lee Byung-soon as the new president. Upon this procedure, 3 reporters and producers were fired

and dismissed and 8 journalists were submitted to a disciplinary action for their resisting actions and demonstrations in regard to Lee's inauguration. On November 12, 2009, the Seoul Administrative Court reached a final ruling that annulled the dismissal of Jeong Youn-ju, the former KBS president, pointing to the inappropriateness of the causes for dismissal causes and a fault in the dismissal procedure. Furthermore, a reinstatement ruling resulted from the judgement of the Supreme Court which viewed Dong Eui University's firing of Shin Tae-sub as unjust. However, the Korea Communications Commission appointed Kim In-gyu as the new president of KBS on November 24, 2009, just a week after the court's ruling. Kim In-gyu has a history of having worked as a head of the department that designed Korean broadcasting strategies during President Lee Myung-bak's candidate years. Since then, KBS is being criticized as a centrally controlled broadcasting station that has become incapable of observing and criticizing the government--which is considered as an inherent value of the press.

3. Dismissal and Imprisonment of a Yonhap TV News (YTN) Reporter

The board of directors of YTN, the round-the-clock news channel, appointed Gu Bon-Hong as the president of YTN on Junly 17, 2008. Gu used to work as a special media adviser for president Lee Myung-bak during his candidate years. Labor unions of YTN regarded Gu's inauguration as a government conspiracy to control and destroy justice in broadcast media. Therefore, the labor unions engaged in various protests: obstructing Gu's showing up at work; carrying out black strikes (a strike expressed by an anchor's wearing of a black suit while delivering a news); going through a hunger strike and pushing ahead with group strikes. In the process, four labor union members were arrested in front of their homes and No Jong-myun, the union leader, was imprisoned—reenacting the arrest of journalists in ten years. Also, the company took a disciplinary action against 38 labor union members for the reasons of obstructing duty and refusing to follow personnel appointment orders. Ten newsroom reporters were shunted off to regional branches and twelve labor union members were charged with obstruction of duty. Amongst the measures taken, dismissal of six reporters was included. This incident is the first of its kind since the mass dismissal happened under the military dictatorship of Jeon Du-Hwan in 1980. On November 13, 2009, the Seoul Central District Court declared the dismissal invalid upon deciding that the struggle against the inauguration of a president who had supported a particular political party is justifiable. The court affirmed that a broadcast station should always remain politically neutral for the promotion of the public interest. However, six reporters remain in dismissal status due to the company's appeal. Moreover, on December 10, 2009, a monetary penalty amounting to 51,500,000 thousand won was finally set for seven labor union members including the dismissed who were indicted on charges of obstruction of duty in the court of appeals.

<Table 3-1> Number of journalists arrested, imprisoned, expelled and dismissed from 2008 to 2010

| Category | Number of people | Reference |
|------------|------------------|---|
| Arrested | 11 | <ul style="list-style-type: none"> ● six people from MBC <PD Notebook > ● four from YTN ● the chairman of National Union of Mediaworkers |
| Imprisoned | 1 | <ul style="list-style-type: none"> ● a YTN journalist ● (First imprisonment of a journalist in ten years) |
| Fined | 7 | <ul style="list-style-type: none"> ● seven from YTN (51,500,000 won) |
| Expelled | 2 | <ul style="list-style-type: none"> ● two from KBS |
| Dismissed | 8 | <ul style="list-style-type: none"> ● two including the former president of KBS ● six from YTN |

*Source: National Union of Media Workers

3-3. Destruction of Press Diversity caused by Amendment to the Media Law

The Grand National Party, which is currently the ruling party of Korea, unilaterally enacted a media-related bill including the Broadcast Law and the Newspaper Law--without reaching an agreement with the opposition party. Enunciation of a proposal, deliberation procedures, and Q&A sessions were all illegally omitted in the enactment procedure. Re-voting was conducted, even violating the legal norm of meeting a quorum and a principle not to deliberate the same measure twice during the same session. There was also a debated rumor about proxy votes. The opposition party applied for provisional disposition to suspend the Media Law and demanded a Dispute Resolution of Authority for the Chairman of the National Assembly to the Constitutional Court. On October 29, 2009, the Constitutional Court acknowledged the fact that the deliberation and voting rights of the opposition party members in the National Assembly had been infringed. However, the Court reached a contradictory ruling in that it rejected the application for a provisional disposition of suspension. Along with the decision, the Constitutional Court demanded the Chairman of the National Assembly handle the matter in accordance with its determination purpose. However, the government and the ruling party

ignored the judgment and went on to enforce follow-up measures such as the implementing ordinances of the Broadcast Law.

In response to this, the opposition party demanded authoritative dispute judgment on the non-performance. The Chairman of the National Assembly was urged to perform the command of the Constitutional Court. Details of the bill which were illegally passed dealt with allowing conglomerates, newspaper companies and foreign capital to advance to the broadcasting field. The largest shareholder equity of terrestrial broadcasting system, compositively scheduled cable channels and news specializing channels was elevated from its level of 30% to 40%. As for conglomerates and newspaper companies, they became capable of retaining ten-percent equity in terrestrial broadcasting systems and thirty-percent-equity of compositively scheduled news specializing channels respectively. Devices that were previously established to prevent the despotism of large stockholders and the monopoly of public opinion to guarantee press diversity were all destroyed, just to ease regulations. Particularly, the alliance between large conglomerates and newspaper companies that share similar interests became readily feasible since the total amount of equity possessed by conglomerates and newspaper companies was unlimited. In fact, it has become possible to create a broadcasting station which is a union of Samsung, CJ Corporation, and Joong Ang Ilbo.

It is well-known that Korean society is a community in which the influences of school, regional, and blood ties are comparatively stronger than other countries. The three major cliques of the newspaper companies, the Chosun Ilbo, Joong Ang Ilbo, and Dong-A Ilbo, occupy more than 70% of the Korean newspaper market and retain wedding ties (network built on marriages) with political authorities and conglomerates. And until now, the three major newspaper companies have been loyal to merely securing the interest of political authority and the ruling class by reporting distorted or prejudiced news. The amendment of the Media Law is the same as providing a systematic way for political authority and capital or a newspaper clique to possess the last remaining public sphere of terrestrial broadcasting system, compositively scheduled cable channels and news specializing channels. As a consequence, a solid foundation was laid to damage the press diversity and incapacitate the media's function of observing the authorities.

Reporters Without Borders (RWB) ranked the Republic of Korea 69th out of 175 countries in its 2009 global press freedom index. In 2007, before the establishment of the Lee administration, the country ranked 39th. Since the inauguration of the present administration, the Republic of Korea ranked 47th and 69th in 2008 and 2009 respectively—due to the severely destroyed press diversity resulting from the arrest of an YTN reporter and the illegally passed Media Law.

3-4. Introduction of Film Rating System: De Facto Censorship After the Abolishment of the Performance Ethics Committee

According to the Promotion of the Motion Pictures and Video Products Act enacted in 2006, every movie has to be categorized according to its showing rate in order to be shown at theaters. A proprietor of the theater who violates this will suffer punishment of “business suspension and cancellation of theater registration” (Article 45 of the Promotion of the Motion Pictures and Video Products Act). As for the person who screened the movie, he will be punished by imprisonment for not more than three years or by a fine not exceeding thirty million won (Article 94 of Promotion of the Motion Pictures and Video Products Act). The grave problem lies in the comprehensive application of the law that regulates all movies, even those made for nonprofit purposes such as education and provision of information. Experimental cinemas and movies shown at university theaters are not free from regulation. This is an obvious case of preliminary censorship and extreme restriction on the freedom of expression to forcibly obligate even nonprofit, independent films to be classified by its showing rate. Anyone who wishes to screen a movie needs to submit his film in advance to go through a preliminary examination by an administrative governmental body (Korea Media Rating Board), regardless of profit-making purposes. It goes without saying that the administrative power will unilaterally carry out the whole examination procedure. If anyone screens a movie that was not rated, he or she is subject to punishment according to the relevant provision. Consequently, the Promotion of the Motion Pictures and Video Products Act has compulsory measures to prohibit disapproved expression of opinion and to control the examination procedure by obligating all movies to be comprehensively rated.

There is also an escape clause to the rating system: Recommended Exemption to Showing Rate Classification (Article 29.1 and Article 29.2 of Promotion of the Motion Pictures and Video Products Act). The clause states that movies screened at film festivals recommended by the administrative governmental body (Korean Film Council) will be exempted from the classification procedure of the rating system. However, the clause cannot be regarded as a practical escape clause due to the following aspects: a) one cannot secure the theater to screen a film if not recommended by the administrative governmental body; b) one is subject to the aforementioned punishment if he screens a film without recommendation. Besides, concerns for abusing the recommendation right are highlighted since the recommendation standards of the Korean Film Council are said to be ambiguous and comprehensive.

The Seoul Human Rights Film Festival is a nonprofit film festival that shows films free of charge—protesting to the preliminary examination and promoting the freedom of expression. The film festival has run since 1997 and refused recommendation from the Korean Film Council because it viewed the recommendation from an administrative government body as a disguised preliminary examination. In 2001, some films that had been previously shown at the Seoul International Animation Festival were not exempted from the classification procedure of the rating system, with the excuse of a high level of sexual and violent expression. Since 2007,

when the Lee Myung-bak administration took power, the Seoul Human Rights Film Festival has held the festival on streets because borrowing theaters was impossible without the recommendation of the Korean Film Council. As of today, April 5, 2010, the Seoul Human Rights Film Festival applied for the usage of Cheonggye Square, but was disapproved. It was revealed that the Seoul Cheonggye Square Facilities Management Corporation contacted the Korean Film Council in early March of 2010 to check for a record of recommendation for the Human Rights Film Festival. Being unable to borrow theaters, the Seoul Human Rights Film Festival is carrying out on-street film screenings today but the hardships are expected to worsen because the administrative bodies are excessively regulating the showing by any means.

3-5. Lee Government Oppresses the Representative Writers preferentially

1. The Ministry of National Defense classified AWNL members' books as disturbing ones threatening their working activities.

On 22 July 2008, 23 books were designated as disturbing ones and reading them is under the ban by the Ministry of National Defense. The works of the former chairman and consultant of the AWNL, Hyun Ki-young's *A Spoonful of Ground* and the selected poems of Kim Nam-ju, *Flowers in the blood flow*, and *Critical biography of Kim Nam-ju* are among those books. Kim died after long years in prison on the charge of the National Security Law.

To ban certain books is a dead penalty and a huge threat to the writer. The works of Hyun Ki-Young were already national best-sellers before the ban and they do not have any claims to disturb our nation. But prohibiting the poems of Kim and appointing the works of Hyun as seditious ones mean to hold out its fist to the writers who tried to follow the spirit of democracy.

2. Lee government summoned and investigated the poet who recited the eulogy in the funeral of Yongsan tragedy

On 9 January 2010, a poet Song Kyung-dong, who recited the eulogy in the funeral of Yongsan tragedy and participated in the memorial march, was charged with obstruction of justice for the police officer and is being investigated now. Yongsan tragedy is the issue which the current Prime Minister apologized on behalf of the government, a lot of citizens participated in the memorial march, but not all of them convicted. The government arrested or prosecuted Song whenever he recited poems to assist workers or squatters, it shows the government's future willingness to prosecute all the writers or poets being related with this kind of incident.

3. Lee Government classified AWNL as left-wing and deprived of art teaching opportunities

On 19 May 2009, the adviser of AWNL, Hwang Jiwoo resigned from his position of President of Korea National University of Arts. At that time, the press analyzed that "This issue is causing a stir because the president of KNUA Hwang, a representative modern poet in Korea, is fall from his position after being classified as progressive or left." (The Kukmin Ilbo dated 19 May 2009).

4. A writer was accused of publishing selected comments from the Internet

On October 2008, the General Secretary of AWNL and novelist, Kim Nam-il, was accused by Sim Jae-cheol, one of the GNP lawmakers, on the charge of defamation. Kim, the representative of a publishing company, simply collected comments by netizens from Agora, a section of the DAUM portal site, and published them in the title of Agora, Korea's Priority Knowledge. As internet is one of the public spheres, it functions as a passage of direct democracy. Therefore, the accusation by a lawmaker of the dominant party is an undeniable suppression.

5. An administrative violence, Lee government uses arts funding as bait

On 20 January 2010, Arts Council of Korea demanded AWNL, who attended a candlelight vigil in May 2008, to present the confirmation of the point of submission that "we did not attended that illegal demonstrations, we will not do. If we do in the future, we will return the funds." (See Chapter 4 Freedom of assembly, association. Appendix)

3-6. Recommendations

- Criticizing the political authority and observing governmental activities are genuine duties of the press.
- Journalists should not be arrested, imprisoned, expelled and dismissed from their work for fulfilling their duties. They should not be subjected to punishment for defamation and obstruction of duty.
- The Media Law must be discussed again within the National Assembly members, as specified in the ruling finally reached by the Constitutional Court.
- The judgment of the Constitutional Court reaffirms that the Media Law is illegal since it severely damages press diversity through relaxing ownership regulations.

- On the other hand, movies shown at nonprofit film festivals with educational and informative purposes and experimental cinemas should be granted a right to freely screen and distribute movies themselves without a rating in order to expand cultural diversity and guarantee freedom of expression.
- Preliminary examination and rating system of the administrative governmental bodies should be abolished since they impede the free and active creation of nonprofit movies.
- Ministry of National Defense should stop for the artist's creative expressions to specify disturbing books.
- Do not criminalize a variety of artists' expressional activities as obstruction of business activities and defamation. Stop accusing against the poet Song Kyung-dong with obstruction and the novelist Kim Nam-il with defamation.
- Make an apology for political maneuvering; Lee Government stigmatized Korea National University of Arts as the hotbed of left-wing (according to the testimony of the lawmaker Choi Moon-sun in 2008 inspection of the administration) and urged its president Hwang Ji-woo to resign.

CHAPTER 4. FREEDOM OF ASSEMBLY AND ASSOCIATION

4-1. Overview

In 1992, the UN Human Rights Committee recommended in its concluding observation to the initial report submitted by the Korean government (CCPR/C/79/Add.6, 25.Sep.1992) that the government should “take measures to downsize the limits in implementing the right to peaceful assembly.” In its concluding observation to the second report of the Korean government (CCPR/C/79/Add. 144, 1 Nov.1999), the committee recommended that “prohibiting all assemblies on all the main streets of Seoul is extensively limiting people’s rights.” The Human Rights Council recommended in the UPR Report (A/HRC/8/40) that the Korean government creates a law that would ensure the freedom of assembly and association.

Despite continuous recommendations from the United Nations, the Assembly and Demonstration Act still exists as an act limiting the freedom of assembly and demonstration, not guaranteeing the exercise of it, and yet the amendment of the act has not taken place. Furthermore, the freedom of assembly and demonstration is restricted not only by the Assembly and Demonstration Act, but also by the Criminal Act. The Korean government treats citizens exercising the freedom of assembly and demonstration as “criminals”. The repression of the freedom of assembly and demonstration became worse after the candlelight assembly in 2008. Compared to the previous government, the number of people imprisoned due to violation of the act has increased exceedingly. Since 2009, the police have used indiscriminate violence against citizens exercising the freedom. The Yongsan incident in January, 2009, the strike of freight workers in May, and the abuse of power against the strike of the workers belonging to Ssangyong Motors in July through August, (refer to the freedom of expression in working place) all show extreme cases of police violence.

Besides, while deciding whether or not to support nonprofit organizations, the government threatens the freedom of assembly and association by cutting subsidies or by demanding written oaths at the stage of application and payment of the subsidies, based on the ‘2009 Budget Guidelines’ of the Ministry of Strategy and Finance, and on the criteria of “organizations concerned with illegal violent demonstrations” set up by the police.

4-2. The Assembly and Demonstration Act: Infringement on freedom of assembly and demonstration due to general traffic obstruction

1. Problems concerning the Assembly and Demonstration Act

The Assembly and Demonstration Act allows the police to prohibit peaceful assemblies and demonstrations on the basis of ambiguous reasons. The Korean Constitution clearly stipulates that no permit system is allowed on assemblies and demonstrations, but in fact it is a permit system, and not a “reporting system”, that operates the act. In 2009, only one applicant obtained the permission from the police, as a result of the campaign called “Reporting Assemblies in 100 Places in Seoul” carried out by human rights organizations. The only case allowed was the assembly of the Korean Confederation of Trade Unions which proceeded in front of the Kookmin Bank during daytime from 25 to 30 May.

<Table 4-1> The result of “Reporting Assemblies in 100 Places of Seoul” campaign

| Organization | Agenda | Date | Place | Reason of nonpermission |
|--|--|----------------------------|--|-----------------------------------|
| 1. Korean Youth Organization | Solution of youth unemployment | 6/18~22 (Sunrise~22:00) | Seoul Station, Myung Dong | Time prohibition |
| 2. Democratic Labor Party | 22nd Year Commemoration of June Struggle | 6/10 | Dong Hwa Duty Free, Chenonggye Square | Competition of venue, Main street |
| 3. Solidarity of the succession of democratic spirit | Succession meeting of June Struggle | 6/10 | Seoul Square | Competition of venue |
| 4. Yongsan Massacre Coalition | Solution of the Yongsan incident | 5/25~6/21 | In front of Namildang (site of incident) | Disturbance of public order |
| 5. Jinbocorea | Denunciation of Lee Myung-Bak administration | 5/25~6/21 | Boshingak, Kyoboso Park, Dong Hwa Duty Free, Donga Newspaper, Samsung Tower, Cheonggye Square, Kwangwhamoon, Sidewalk in front of KT | Competition of venue Main street |
| 6. Solidarity for Peace And Reunification of Korea | The 117th assembly of anti U.S. solidarity | 6/16 | Sidewalk in front of KT | Competition of venue |

| | | | | |
|---|--|---|--|---|
| 7. Solidarity for the abolition of the National Security Law | Repression of the national union of reunification, denunciation of the National Intelligence Service | 5/16~30 | In front of the National Intelligence Service (NIS) | Disturbance of public order |
| 8. New Jinbo Party | 6.10 Meeting/the Grand Canal | 5/25~6/21 | Maronie Park, Dae-hak Street | Nonacceptance due to competition of venue |
| 9. All Together | Anti-war and peace | 5/25~6/21 | Myungdong, Myungdong Catholic Church | Nonacceptance due to competition of venue |
| 10. The Korean Confederation of Trade Unions | Abolition of temps, impediment of unjust MB law | 5/25~31 08:00~19:00 5/25~31 19:00~22:00 | In front of Kookmin Bank, Yeouido | Time Prohibition |
| 11. National Committee of the Reinstatement of the dismissed laborers | Reinstatement of the dismissed laborers | 5/21 | Sidewalk in front of the Kyunghee palace park | Main street |
| 12. Metal Labor Union | Objection to Ssangyong Motors layoff and restructuring | 5/13~14 5/19 5/20 5/22 | | |
| 13. National Union of Reunification | End of repression on National Union of Reunification | | | Group benefitting the enemy |
| 14. Catholic Rights Committee | Guaranty of assembly and demonstration, end of public peace repression, protection of democracy | 5/28~5/31 6/1~6/3 6/4~6/6 6/7~6/9 6/10~6/13 | <3 steps 1 bow> Cheonggye Square~Seoul Station Seoul Station~ Myung Dong Dae-Hak Street~ Kyobomungo, Kwangwhamoon | Competition of venue Main street |

| | | | |
|--|--|-----------|---|
| | | 6/14~6/16 | Seoul Station~Yongsan site |
| | | 6/17 | Hangang Citizen Park~Cheongun Dong office |
| | | 6/18 | |
| | | 6/19 | Yeouido~ Yongsan incident site |
| | | 6/20~6/22 | <bicycle parade> Cheonggye Square~ Seoul Station Seoul Station~Myung Dong Dae-Hak Street~ Kyobomoongo, Kwangwhamoon Seoul Station~Yongsan incident site |

*Source: Korea Alliance of Progressive Movements

The numbers of those who were arrested have dramatically increased from 2008 to 2009 as presented in the table below. The Authorities arbitrarily arrested those who were in the assembly for charges against violation of the Assembly and Demonstration Act.

<Table 4-2> Legal Actions for Violation of the Assembly and Demonstration Act since 2008

| Sector | | total | Imprisoned | Without detention | other results | Sector | | Total | Imprisoned | without detention | other results |
|--------|-------|-------|------------|----------------------|------------------|--------|-------|-------|------------|----------------------|------------------|
| '08 | Month | 2,381 | 38 | 2,159 | 184 | '09 | Month | 1,802 | 40 | 1,394 | 368 |
| | 1 | 157 | 2 | 127 | 28 | | 1 | 63 | | 56 | 7 |
| | 2 | 77 | | 64 | 13 | | 2 | 98 | | 90 | 8 |
| | 3 | 146 | 2 | 126 | 18 | | 3 | 137 | 5 | 114 | 18 |

| | | | | | | | | | | | |
|-----|----|-----|---|-----|----|--|----|-----|----|-----|----|
| | 4 | 113 | 1 | 96 | 16 | | 4 | 94 | 4 | 68 | 22 |
| | 5 | 130 | 1 | 118 | 11 | | 5 | 165 | 18 | 136 | 11 |
| | 6 | 135 | 6 | 127 | 2 | | 6 | 167 | 1 | 139 | 27 |
| | 7 | 308 | 4 | 287 | 17 | | 7 | 113 | 1 | 92 | 20 |
| | 8 | 370 | 7 | 350 | 13 | | 8 | 188 | 4 | 141 | 43 |
| | 9 | 404 | 5 | 370 | 29 | | 9 | 204 | 2 | 132 | 70 |
| | 10 | 279 | 2 | 268 | 9 | | 10 | 317 | 3 | 237 | 77 |
| | 11 | 155 | 7 | 140 | 8 | | 11 | 205 | 1 | 141 | 63 |
| | 12 | 107 | 1 | 86 | 20 | | 12 | 51 | 1 | 48 | 2 |
| '10 | 1 | 109 | 2 | 220 | 59 | | | | | | |
| | 2 | 102 | | 83 | 19 | | | | | | |
| | 3 | 71 | 1 | 61 | 9 | | | | | | |

*Source Korean National Police Agency

Competition of venue takes the first place in the table above, where it indicates the present condition of the police prohibition on assemblies. (Refer to the table above.) This is the case in which companies or organizations with some kind of relationship with the police notify them before the demonstrators, when the citizens or human rights organizations and labor unions plan to hold an assembly to criticize the government or the company. These assemblies are called 'ghost assemblies' because they are not actually held.

<Table 4-3> 2008-2010.2 Current statistics on assembly prohibition

| Year | reporter Case | total (%) | Art5 | Art 8 | | | | | | Art 10 | Art 11 | Art 12 |
|-------------|---------------|---------------|--------------------------|--------------------------|--------------------------------------|--|----------------------------------|----------------------------|--------------------------------------|------------------|-------------------|-----------------------|
| | | | Para1,item 2 | 1para | item1 | item2 | para3, item1 | para3,item2 | para3,item3 | | | |
| | | | Threatening public order | Failure to complete form | Prohibition of the remained assembly | Overlapping registration for assembly site | Disturbing the peace and privacy | In the vicinity of schools | In the vicinity of military facility | Prohibited hours | Prohibited places | Blocking Traffic flow |
| 2010 1-2 | 26,208 | 162 (0.62) | 71 | 11 | 0 | 19 | 21 | 0 | 2 | 0 | 5 | 33 |
| 2009 | 155,030 | 900 (0.58) | 379 | 26 | 5 | 190 | 66 | 7 | 1 | 8 | 20 | 198 |
| 2008 | 123,495 | 299 (0.24) | 31 | 16 | 8 | 140 | 16 | 4 | 6 | 2 | 7 | 69 |
| 2007 | 96,142 | 368 (0.39) | 86 | 12 | 3 | 181 | 5 | 2 | 1 | 3 | 10 | 65 |
| 2006 | 65,704 | 454 (0.69) | 134 | 14 | 75 | 164 | 11 | 6 | 4 | 2 | 9 | 35 |

*Source: The Korean National Policy Agency

As to unreported assemblies, the police can issue an order to disperse the demonstration at their discretion, without regard to the place, time, and means of the demonstration and assemblies. Besides, the police constantly take the participants to a police station on the ground that they have not notified the police of hosting a demonstration even though there is obviously no disturbance of order. Recently, the police go as far

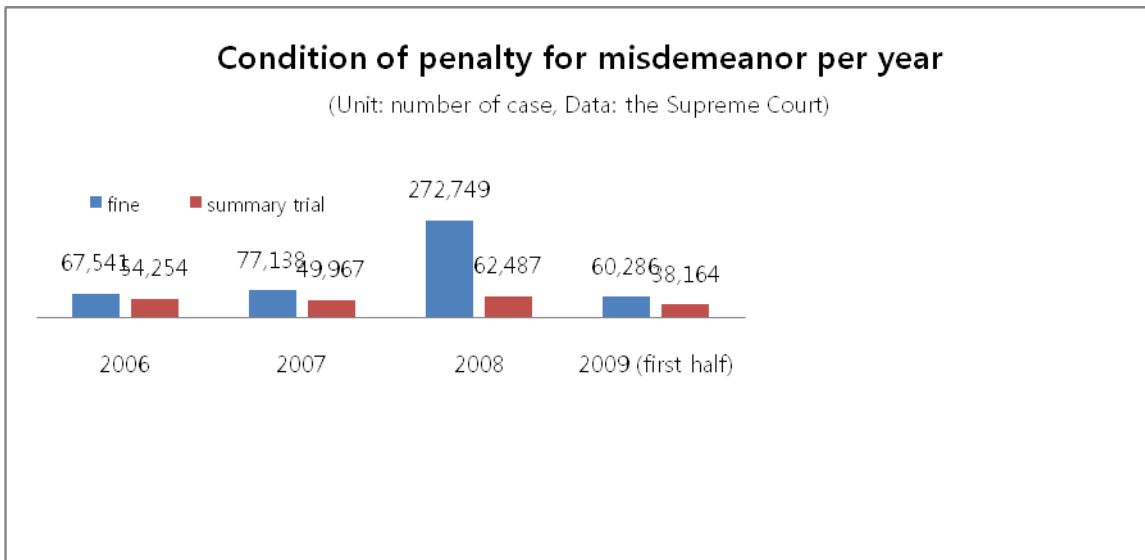
as to take people who participate in press interviews, cultural festivals, or even one-person demonstrations where they merely hold pickets shouting slogans, to police stations.

The Assembly and Demonstration Act stipulate that the police can prohibit demonstrations and assemblies when they think it necessary for the flow of traffic on the major 89 streets, which are issued by a Presidential decree (Article 12). Moreover, they can prohibit open-air assemblies and demonstrations in an area within a distance of 100m from the National Assembly, the Court, the Constitutional Court, the Blue House, the official residence of the Chairman of Congress, an official residence of the court, an official residence of the Constitutional Court, the official residence of the Prime Minister, foreign diplomatic institutions in Korea or from the residence of diplomatic delegates (Article 11). And as far as the police do not give permission, assemblies before sunrise or after sunset are all prohibited (Article 10). In 2009, the Constitutional Court ruled that Article 10 of the Act is unconstitutional, but the police and the prosecution are still following the current act. A bill to revise Article 10 of the Act, which prohibits assemblies by time slots, has currently been introduced in the National Assembly by Cho Jin Hyung, a member of the Hannara Party. Human rights organizations are pushing hard for the elimination of Article 10. The Hannara Party, the party currently in power, is trying to change the Act for the worse and thus to harm the freedom of assembly and demonstration by adding conditions such as prohibition of wearing masks, reinforcement of penalty, and filming or photographing the place of demonstration.

2. Application of ‘misdemeanor’ and ‘general obstruction of traffic’ to the freedom of assembly and demonstration

Even the act of distributing printed materials is subject to imprisonment on suspicion of distribution of illegal printouts. On July 15 and 16, 2009, the police put handcuffs on a number of students and citizens, and walked them to a police station because they had distributed printouts made by the Democratic Labor Party and the Korean Confederation of Trade Unions. The police defined the materials as illegal printouts and forcibly ceased the act of distribution by reason of violation of the “outdoor advertisements, etc. control act”.

Furthermore, when the “Joint Committee with Migrants in Korea” tried to perform in front of the central government complex the situation of the migrant workers who had been illegally arrested without even their clothes on, the police stopped the performance insisting that “they did not put on upper clothes, so that they should be punished for misdemeanor.” (Table being renewed)



*Source: 2009. 7. 29. Kyunghyang Newspaper

The representative case where the freedom of assembly and demonstration is punished according to the Criminal Act is “general obstruction of traffic (Article 185 of the Criminal Act)”. According to Minbyun, 551 people (88%) among the 627 were defendants in a formal trial among the people either taken to a police station or prosecuted for general obstruction of traffic, owing to having participated in candlelight demonstrations.

<Table 4-4> Analysis of the 627 defendants of the candlelight case covered by Minbyun

| Name of crime | Number of cases | Average fine |
|--|-----------------|--------------|
| Assembly and Demonstration Act, General obstruction of traffic | 491 | 152.2295082 |
| Assembly and Demonstration Act | 60 | 62 |
| General obstruction of traffic | 52 | 144.2307692 |
| Obstruction of performance of official duties | 8 | 200 |

| | | |
|---|-----|-------------|
| General obstruction of traffic | 3 | 50 |
| Special obstruction of public duty | 8 | 200 |
| Assembly and Demonstration Act, General obstruction of traffic, Obstruction of performance of official duties | 4 | 235.7 |
| Invalidity of public documents, etc. and destruction of public goods | 1 | 300 |
| Total | 627 | 147.5279107 |

*Source: Minbyun-Lawyers for a Democratic Society

The Criminal Act strictly imposes a restriction on arresting a person under the Act, in a case where fines are below 500,000won. (The Article 23 of the Assembly and Demonstration Act, which stipulates fines for violation, imposes to a general violator a fine below 500,000won or detention.) Due to this, the police arrest the demonstrators under the act based on general obstruction of traffic as stipulated in the Criminal Act. In April, 2009, the Catholic Rights Committee and Sarangbang requested adjudication on the constitutionality of law to the Appeal Department 8 of Seoul Central District Court, to the effect that applying general obstruction of traffic to demonstrations and assemblies is unconstitutional. On May 1, the Justice Department accepted this and requested adjudication on the constitutionality of the law to the Constitutional Court. On March 25, 2010, the Constitutional Court ruled that the concerned article is not unconstitutional. But human rights organizations are insisting that the Court gave indulgence to the police and prosecution, who had constantly infringed on assemblies and demonstrations by applying excessive punishment.

3. Police violence and militarization

The police wield excessive violence against not only demonstrators but also laborers, farmers or people driven out of their homes, who had exercised the freedom of association to express their right to live. In 2005, two protesting farmers (Jeon Yong Chul, Hong~) were beaten to death, and in 2009, 5 homeless people and 1 policeman died from excessive police repression. The police wield illegal violence against women, children, and the disabled with clubs and shields, but such violence of the police is always hidden under anonymity.

And the police who resort to violence are almost never punished. In 2008, approximately 30 accusations were filed against the police with regard to candlelight demonstrations, but there was no single case up to 2009 where even the investigation was launched.

Since 2008, the police equipments for repression have been improving very quickly. A large part of the budget has been used in the reinforcement of individual weapons, expansion of the use of chemical weapons including carcinogen and tear liquid, and in the improvement of the function of aid vehicles and the development of new armed vehicles. In 2008, the police used KRW 52,353,000,000 (US\$4,450,000) for the purchase of equipment for riot police. (The National Policy Agency) And they began to use chemical weapons with tear liquid inside, the use of which has been banned since 1998. The police spray tear liquid using water cannons and personal spray tools, and the tear liquid consists of ingredients such as dichloromethane, which are strictly prohibited in use due to a carcinogenic danger.

4-3. Infringement on the freedom of assembly and demonstration according to ordinance on use of public squares

Despite the name ‘Square’, assemblies and even press interviews cannot be freely held in both Seoul Square and Kwangwhamoon Square (the latter opened in August, 2009), the two representative squares of Seoul. To hold an assembly in Seoul Square, it is not only necessary to notify the police beforehand, but is also required to obtain permission for use from the government. From May 23-30, 2009, encircling Seoul Square with buses, the police blockaded citizens entering the square without a legal ground, when the former President Roh Moo Hyun passed away. The citizens spontaneously wanted to commemorate the memory of the deceased president, but the police, setting up a barricade with vehicles, did not open the square, nor allow the assembly, on the ground that there was a possibility of an illegal protest.

Furthermore, Seoul City runs the permit system by means of a city ordinance, according to which anyone who intends to hold an assembly in Seoul Square is required to get permission from the city government (Ordinance on Seoul Square Use, Ordinance on Kwangwhamoon Square Use), even though the Korean Constitution clearly stipulates that such a permit system on demonstration and assemblies is prohibited. The city government restricts the purpose of use of the square to ‘making good use of spare time’ and ‘cultural activity’ through the Ordinance on Seoul Square Use, but the meaning of this is not clear so that deciding whether to allow the use of the square is open to fairly arbitrary interpretation. The Ordinance in Kwangwhamoon Square Use also stipulates the use of the square as ‘making good use of spare time and cultural activity of citizens’, and yet it leaves the possibility of arbitrary interpretation open owing to the ambiguity of the term. So to speak, the square is a place solely for the city and its government events, not for those who have politically different stances from the government.

On June 10, 2009, nongovernmental organizations, including the Democratic Party and People's Solidarity for Participatory Democracy, applied to the police and the Seoul city government for permission to the square along with reporting an assembly, in order to host the 'National Culture Memorials for June Struggle Succession and Democracy Restoration' in Seoul Square. But the police and the city government gave notice of prohibition of the assembly and disapproval of use. Since then, almost all of the assemblies and even cultural activities that nongovernmental organizations intended to host have been disapproved. Civil organizations, therefore, are now requesting for the amendment of the ordinance, by getting 100,000 signatures from the residents of Seoul and submitting the list to the city government in December, 2009, in order to change the city ordinance from having permit system to reporting system.

Kwangwahmoon Square, which opened to the public in August 2009, has a more complex problem. All assemblies are prohibited by reason of its location near the United States embassy, and the use of the square depends entirely on the permit system operated by the city government. Assemblies and activities opposing the policies of the government are strictly blocked. What is worse is that the police prohibit even holding a press interview in Kwangwhamoon Square. As a matter of fact, when nongovernmental organizations including Cultural Action held a press interview on August 3, 2009 against the exclusive operation of the square, the police dispersed the crowd on the ground that it was an undeclared illegal assembly, and the police even prosecuted 10 activists who had been peacefully running the interview, on suspicion of violation of the Assembly and Demonstration Act. Moreover, even peaceful one-person demonstrations have been prosecuted as an illegal assembly several times.

4-4. Candlelight Demonstration against the Import of the U.S. Beef in 2008

In 2008, there was a large-scale demonstration against the import of U.S. beef. The candlelight demonstration which began on May 2 proceeded in a quiet way, in which students peacefully gathered in Cheonggye Square holding candles during the evening. The police announced that they would take legal action against the promoter because it was an undeclared illegal assembly. The 17th demonstration on May 24 progressed into an all-night street demonstration because the government did not show any change of stance even though there had been incessant candlelight demonstrations before. Demonstrators sat on streets together holding candles, but the police forcibly dispersed them the following dawn. The police forcibly dispersed the crowd, while 37 of those attending were arrested and many of the participants including women were injured. At dawn on this day, the press announced that the police, the prosecution, and the National Intelligence Service had had a meeting with concerned agencies to establish measures, and had drawn up measures to punish the

leader of the demonstration. As people who witnessed the brutal repression by the police began to rage, the number of participants grew on a daily basis.

On May 31, the police set up barricades with police buses against approximately 10,000 demonstrators, who had been confronting the police all night long in Samcheong Dong near the Blue House, and the police blasted the demonstrators with water cannons from the other side of the road. On the next day, when the number of demonstrators decreased, the police put in place water cannon trucks and SWAT teams to repress the demonstration. The water cannons were not supposed to be targeted towards people according to the police instructions, but were in fact always aimed at the demonstrators. (After this the police announced that they had changed the instructions so they could aim directly at people.) The demonstrators endured the water cannons with nothing and by no means responded to them violently. They did no more than shake the police buses blocking the road, or throw empty plastic bottles into the air. At dawn the next day, the demonstrators were helplessly pushed aside as the police began pushing forward with water cannon trucks and SWAT teams. Many people including women got their heads struck by shields or clubs and were injured to the extent of bleeding. A woman, who was later identified as a college student, was then fallen on the ground and viciously trampled on by the foot of the police, and the video of this was broadcast live. On this day alone, a total of 228 people were arrested.

On June 10, when approximately 1,000,000 demonstrators were assembled, the police blockaded Kwangwhamoon Road and Sejong Road with a number of freight containers from the morning, and completely closed off the road to stop everyone from passing. On June 29, an incident happened where the police cruelly smashed and stamped on 80 people belonging to a YMCA action group called 'Lie-down', who laid on the ground as an act of nonviolent insubordination in front of the police. Starting on August 5 when the U.S. President Bush visited Korea, the police repression became even more aggressive. The police used water cannons mixed with fluorescent red paint and tear liquid, and operations by the plain-clothes officers were carried out indiscriminately. Citizens were considered subject to arrest whenever they got caught in a group on the streets or with mere red stains on their clothes. Reporters from the press were soon freed after their arrest, but independent citizen reporters who had no affiliation were not in the same position. On August 5, a total of 167 citizens were arrested. Even on August 15, which is Independence Day in Korea, 157 in total were arrested. A few citizens tried to merely hold candles without slogans or pickets in a group of 2 people, in a way of extremely restrained expression, but even this was forbidden by the police.

4-5. Yongsan Incident and Restriction on the Right to Assembly

The police took away lives of six people as a result of carrying out a counter-terrorism mission against the people driven out of their homes by the government, fighting for their right to live. On January 20, 2009, there

happened a tragic incident where the tenants of the redevelopment area Yongsan 4th Zone in Seoul, who had been arranged to be demolished from the site, built a lookout tower on the rooftop of a building and staged a sit-in, whereupon 5 of the tenants and 1 policeman died from the huge fire during the police repression. According to the police operation document, the police knew before the mission that there had been a lot of inflammables inside the lookout. In the past, in a similar case where the police were deployed at the lookout to repress a demonstration, the police either had a negotiation with the demonstrators, or wait according to the police safety manual until the inflammables were destroyed. But this time they tried to repress the demonstration early by sending a SWAT team into the lookout without even having an actual negotiation. According to the police record of radio messages, the police went on with the mission having even noticed that there was a fire inside the lookout broken out during the repression. The fire was extinguished by the SWAT team, but five demonstrators and one policeman died as the second fire, which broke out right after the first one was extinguished, spread to the entire site. In regard to this incident, the police high command made a statement during the trial that they were not aware of the situation going on inside the lookout, and would have certainly stopped the mission if they knew it.

When the incident happened, human rights organizations formed a task force named “Yongsan Massacre Coalition”, and demanded the investigation and the punishment of the police in charge of the mission. From the very day of the incident, a number of demonstrations and street demonstrations continuously followed, but the police either blocked the protest or dispersed the crowd by brutal means. On February 21, a child of one of the victims was dragged into the police unit and was brutally lynched, while the bereaved were horribly beaten down and the portraits of the deceased broken by the police at the same time. During this period the government deployed thousands of armed police in the center of Seoul, places such as Cheonggye Square, and blocked the demonstrations related to the “Yongsan incident”. Many human rights activists including the presidents of the task force, Pak Lae-Goon and Lee Jong-Hoe, are currently on a trial, on suspicion of having hosted the assemblies and demonstrations.

As the street demonstrations dwindled, candlelight demonstrations at night followed round the tragic site, and the priests participated afterwards. On June 19, the police attacked one of the Catholic priests who had been staging a hunger strike in order to bring the solution, and on 21, another priest got temporarily arrested.

In January, 2010, the government and “Yongsan Massacre Coalition” agreed on the compensation and held a funeral. However, the punishment of the police in charge has not taken place yet, and the trial against the demonstrators is still going on in the court of appeals. For a year, about 300 human rights activists and citizens demanding the investigation and the punishment of the assailant have gone through a trial under indictment of violation of the Assembly and Demonstration Act and general obstruction of traffic, or received a summons to appear in the police station.

4-6. Disadvantages due to exercise of Freedom of Assembly and Demonstration

While deciding whether or not to support nonprofit organizations, the government either cut subsidies or demanded written oaths at the stage of application and payment of the subsidies, based on the '2009 budget guidelines' of the Ministry of Strategy and Finance, and on the criteria of "organizations concerned with illegal and violent demonstration" set up by the police. Private organizations insisted that this act of the government is both an act violating the freedom of assembly and association and an act discriminating against the organizations, and thereupon filed a suit to the administrative court, complained to the National Human Rights Commission of the Republic of Korea, and launched an insubordination campaign.

In December, 2008, the Ministry of Strategy and Finance created and distributed '2009 guideline for management of funds and budget'. This guideline includes orders to limit the payment of subsidies to organizations which have taken the lead or actively participated in illegal demonstrations. Furthermore, the National Police Agency defined the 17 large-scale candlelight demonstrations from May through August 2008 as illegal violent demonstrations, and created a list of 'organizations involved with illegal violent demonstrations' ('Notification of current condition of the organizations involved with illegal violent demonstrations 2008 (1842 organizations)') and had the branches of the government refer to this when they intend to slash the subsidies.

On May 7, 2009, the Ministry of Public Administration and Security (MOPAS) eliminated 6 private organizations including Korean Cultural Solidarity, Korea Network for River and Watershed, Korean Institute for the Study of Rural Societies, Woorimil, and Korean Women Workers Association from the list of grantees of the subsidies amounting to 49 billion won, which was to be used to support the public services of such organizations, due to their having participated in illegal demonstrations. Similar cases with the limit of subsidies are frequently happening concerning not only the MOPAS but also other governmental institutions and local governments.

The Ministry of Gender Equality requested to women's organizations and laborers' organizations, at the stage of application and payment of subsidies, for the submission of the confirmation that they would not 'use the subsidies for illegal demonstrations' nor 'participate in illegal demonstrations'. When the Ministry of Gender Equality revoked the decision to cooperate and grant a subsidy to such organizations because of their not accepting the confirmation request, Korea Women's Hot Line (KWHL) filed a suit against the ministry on September 1, 2009. The KWHL won the case at the first trial, whereupon the prosecution lodged an appeal right away. But Korean Women Workers Association, which filed a suit against the Ministry of Public Administration and Security for the exact same reason, lost the case at the first trial and appealed to Seoul Administrative Court afterwards.

Similar cases have continued to occur, where the culture and art community has been discriminatively denied the support of the government based on the budget guideline created by the Ministry of Strategy and Finance.

Although Junbook Independent Film Association, Korea Film Directors Society, and Coalition for cultural Diversity Moving Images were all evaluated as ‘appropriate for grant’, Korean Film Council eliminated them from the list so that their work, which had been maintained for years before, had to come to a halt.

Both Seoul Human Rights Film Festival and Indie Forum Community received a high praise during the pre-evaluation process and were to be funded thereafter, but they were suddenly excluded at the final evaluation stage on 24 December, 2009, on the ground that they had participated in the candlelight demonstrations. These organizations have currently filed an administrative suit against the Korean Film Council.

On 5 February, 2010, Arts Council Korea sent an official document to Writers Association of Korea and the Daegu and Junbook branches of the Korean People Artist Federation, both of which had been previously approved of the literary promotion fund, requesting for the submission of the confirmation that they would not participate in demonstrations.

The Writers Association of Korea resisting against this act of the council gave up on the government subsidies of 34 million won, and inaugurated a campaign called ‘writing of resistance’ as an expression of protest, along with the suspension of publication of the paper 『Writers opening up the future』 for an indefinite period.

(Refer to the appendix for details)

On May 13, 2009, Korea Communications Committee (KMC) announced the result of selection of ‘2009 service for the neglected class of communications, education on media, and the improvement of the right of the audience’. As to the service of ‘the improvement of the right of the audience’, the 9 selected organizations for this service have no work experience in such areas as the ‘improvement of the right of the audience’ or the ‘improvement of the media environment’. Furthermore, with regard to the ‘service for guaranteeing the right of the neglected class to access media’ among the works dedicated for the ‘communications of the neglected class’ and the ‘education on media’, they have not selected any organizations in the service except for the ‘service for the supply of broadcast receivers’. The Solidarity for Media Consumers assumes the reason that they have been eliminated from the ‘service for the improvement of the right of the audience’ is because they are on the list of the ‘organizations concerned with illegal violent demonstrations’ created by the National Police Agency. The Solidarity for Media Consumers casts doubt on the fact that the KMC announced the result in May without even giving notification for months in delay, even though they had already decided which organizations to select in February, 2009. Besides, they are urging the KMC for elucidation on whether or not the reason they have been eliminated is because they have been listed

as one of the organizations concerned with illegal violent demonstrations, as have been included in the official document of the National Police Agency.

Likewise, as the government uses the subsidies as a means of thought control, social organizations having a critical stance against the government are going through a financial hardship and are seriously restricted in the area of autonomy in having opinions of their own, and in the freedom of assembly and association.

4-7. Recommendations

- Amendment of the Assembly and Demonstration Act and the Ordinance in Square Use is necessary for guaranteeing the freedom of assembly and demonstration. The article 10 of the Assembly and Demonstration Act must be eliminated, especially according to the decision of the Constitutional Court.
- Punishment of the participants of assemblies and demonstrations due to violation of the ‘General Obstruction of Traffic’ and ‘misdemeanor’, and likewise deeming them as criminals must be stopped.
- All of the disadvantages imposed on the demonstrators for having exercised their freedom of assembly and demonstration must be stopped.
- Compensation and apology of the government for the victims of police violence must be given, and the legal penalty of the assailant must be carried out.

4-8. [Appendix] Report on the condition of damage and the stance of ‘Writers Association of Korea’ with regard to the administrative violence of ‘Arts Council Korea’ infringing on the freedom of expression

On January 20, the Writers Association of Korea (Gu Jung-Seo, the chairman of the board) received an official document from the Arts Council Korea that they should submit to the council the confirmation that they would not participate in demonstrations in order to get the 2010 special literary promotion funds from the government. This <confirmation> read that “the association belongs to Anti-mad cow association but has not actively participated in actual illegal demonstrations, and when the evidence of such participation comes out later on, the association will certainly accept liability and return the subsidies accordingly to the council”.

The association defined the request of the Arts Council Korea for submission of the confirmation as an insulting ‘administrative violence’ that intends to censor arts organizations and deny them the freedom of assembly and speech, guaranteed by the Constitution, by offering government subsidies. And on February 20,

the association held a general meeting and unanimously agreed on inaugurating a campaign of resistance against the anti-human rights administrative violence, which assumes the 1,700 writers of this association, who should define the freedom of creation and expression on the basis of their faith and should work accordingly, as potential suspects. On that day, the association passed a resolution to ▲ Deny the submission of <the conformation>, ▲ deny the receipt of the 2010 literary promotion funds of 34 million won, and as an act of resistance against the administrative violence, ▲ to inaugurate the campaign called ‘writing of resistance’.

According to the resolution, the association suspended the publication of its paper “Writers opening up the future”(20 million won), which they had planned on carrying forward with the government subsidies of year 2010 businesses, as a means of protest. And they also found it hard to continue with pushing forward the works of <conversation with global writers> (10 million won), and <50th anniversary seminar of 4.19 revolution> (4 million won). Currently the association has formed a practice committee of ‘writing of resistance’ (Do Jong-Hwan, the chairperson of the committee), and is running a blog with regard to the matter (<http://blog.naver.com/minjak1974>), and is trying to protect through media the freedom of expression by both publishing columns about the cultural policies of the government and hosting symposiums and various related cultural events.

Meanwhile, on March 8, the Arts Council Korea sent an official document titled <notification with regard to special funding conditions of the 2010 literary promotion funds> to the association, under the name of the chairperson, Oh Kwang-soo. The document read “We feel very sorry for the fact that the form of the confirmation and part of its content may have left a possibility of misunderstanding within the arts community, and therefore, we would like to revoke the request for the confirmation.” The document also clarifies that the special funding conditions offered to the association was part of the administrative measures based on the <2010 guideline for management of funds and budget> of the government, which clearly states that the subsidies must not be granted to “Organizations punished for having violated the Assembly and Demonstration Act”. It is also stated in this official document of the Arts Council Korea that they are obliged to manage government funds according to the guideline because it is a type of legal orders which offer the criteria to the managers of the funds for how to manage the budget, based on the article 44 and 80 of the National Finance Act.

However, the association thinks that such an insistence of the cultural administration authorities is indeed an indisputable case proving the infringement on the freedom of expression and the regression of democracy in Korea since the Lee Myung-Bak administration has been launched. The previous government, the Roh Moo-Hyun administration, had only general regulations in the guidelines for management of the funds of the Ministry of Planning and Budget, and they did not stipulate that the organizations punished for violation of the

Assembly and Demonstration Act should have limited funding as in this case. Above all, the excuses of the authorities cannot but be defined as an act denying the purpose of the establishment of itself as a private representative organization, which had turned from the one-person-in-charge organization in September, 2005.

The freedom of expression is a fundamental ground for a country to have both mature democracy and the progress of arts. The association is an organization of writers intending to succeed to the spirit of ‘the committee of writers practicing freedom’, which set off as a spontaneous association of writers to protect the freedom of expression and democracy in 1974, the period of Park Jung-Hee’s dictatorship. The association finds it hard to follow any of the guidelines of the cultural administration authorities that try to infringe on the freedom of creation and expression.

The association also thinks that the revocation of the request for the <confirmation> is not just a problem of ‘selective revocation’ targeted against the organization, but is in fact a problem concerning the democracy, which should be applied to all of the 1,800 civil organizations belonging to Anti-mad cow Association. With this principle in mind, the association will continue to fight to protect the freedom of expression through ‘writing of resistance’, whether or not the authorities revoke the confirmation.

CHAPTER 5. FREEDOM OF EXPRESSION IN WORK PLACE

5-1. Overview: Right to Organize, Bargain and Act Collectively as Prerequisite of the Freedom of Expression in the Workplace

Mr. Abid Hussain, former Special Rapporteur on the right to freedom of opinion and expression provided the view that freedom of associate in trade unions is a prerequisite of the effective collective expression of labour-related opinion in his report on his visiting in Korea on 25th~30th June, 1995. And he specially expressed his concerns about article 13 (2) of the Labour Dispute Mediation Act which prohibits anyone who has no immediate connection to a workplace where a dispute between workers and employer is taking place from intervening in that dispute (so called "prohibition on third party intervention") and the article 3 of the Trade Union Law which prohibit forming and joining of a new trade union when it interfere the work of pre-existing trade unions. He also recommended that due regard should be given to two important ILO conventions; Convention No. 87 and No. 98. The provision of prohibition on third party intervention has repealed. However, other provisions which restrict fundamental labour rights which are prerequisite of freedom of expression in the workplace still remain and the Korean government does not ratify the two ILO conventions. Beside from the laws, various practice which UN committee on Economic, Social and Cultural Rights or ILO express their concerns about, such as charging union leaders for their normal activities under the Criminal Code (Article 314, "Obstruction of Business") and imprisoning them, incapacitating unions through lawsuit for compensation of damage and provisional seizure, using police force to check union activities, also still remain. Irregular workers, whose ratio was rapidly increased after economic crisis in 1997, have more difficulties when they exercise fundamental labour rights.

5-2. Restriction of Fundamental Labour Rights according to Revision of 「Trade Union and Labour Relation Adjustment Act」 on 1st January 2010

Trade Union and Labour Relation Adjustment Act (TULRAA), which the ruling party (New Korea Party) rushed through the National Assembly excluding opposition parties' representatives in 1996 and revised in 1997, provide guarantee 3 basic labour rights in the Constitution and fair adjustment of labour relation as its intent. However, the central plank of the bill was to restrict and prohibit fundamental labour rights. When it was compared to the old version of the labour laws, it contained wider range of limitation and prohibition on subject, objective, procedure, way and means for exercising of the right to act collectively, and give severer penalty for violation. Especially, the provisions which put a ban on wage payment for full-time union officials

and prohibit union pluralism at enterprise level are typical evil law, and ILO has repeatedly recommended that those provisions be abolished in a sense that those is not in line with the international labour standards.

On 1st January, 2010, however, the TULRAA was revised to put more restriction on fundamental labour right and this retrogressive bill was rushed the National Assembly once again. With this revision, a time-off system, which has upper limit, will be introduced when the provision which puts a ban on wage payment for full time union officials takes into effect from 1st July, 2010 and forced bargaining channel unification will be introduced when union pluralism at the enterprise level is permitted. This infringes 3 basic rights guaranteed in the Constitution;

First, regarding to the activities of union officials, the provision which prohibits employer's paying wage for fulltime union officials still remains and work time-off system with upper limit on hours, number of full-time union officials, and range of activities has newly introduced. This is not in line with the international labour standards which leave the wage payment as matter of free and voluntary negotiation between labour and management. This unprecedented system which puts upper limit instead of minimum limit of usable time for paid time-off caused excessive governments' intervention to the right to organize and undermines the principle of voluntarism in the industrial relation, thus, is a violation of the Constitution. Under the revised law, employers shall be punished for unfair labour practice if they provide wage for full-time union officials and trade unions shall be punished(less than 10 million KRW) if they demand more time-off than the limitation.

Second, regarding union pluralism and forced bargaining channel unification, the revised law delays the enforcement of union pluralism at the enterprise level until 1st July, 2011 and forced bargaining channel unification shall be introduced and branches or locals of industrial unions are also subject to the unification. An additional delay of enforcement of union pluralism is a violation of the principle of freedom of association. And under the procedure of bargaining channel unification the right to bargain collectively of minor unions is denied and the right to bargain of industrial union is to be nullified. If plural unions organized at the same workplace or business wants to bargain with management, they should take the steps for bargaining channels unification; ① Voluntary Unification among unions →② If voluntary unification fails within certain period, majority union becomes the representative union →③: In case of no majority union, joint representation should be established including unions which has more than 10% of the total employees as their member. The bargaining representative union shall monopolize the right to sign the collective agreement and leadership for industrial action.

5-3. Denial and limitation of fundamental labour right of government employees and teachers

Trade union activities of teachers and government employees are applied to the separated law, 「Act on the Establishment and Operation etc., of Trade Unions for Teachers」 and 「Act on the Establishment and Operation etc., of Trade Unions of Public Officials」 respectively. Government employees and teachers are denied their right for collective action including strike according to the fact that these laws totally prohibit public officials' and teacher's strike, slowdown, and other actions to impede normal operation of business. In addition to this, these laws include excessive limitation on the category in which workers who can form and join union and the limitation is being expanded. UN Committee on Economic, Cultural and Social Rights recommended that the Korean Government guarantee the fundamental labour rights of government employee and have talks with the Korean Government Employees' Union in its Final Views of 1995, 2002, and 2009. In 2006, Committee on Civil and Political Rights provided the same recommendation to the government. The recommendation to the government which was adopted by the 295th Governing Body of ILO also pointed out several problems of 「Act on the Establishment and Operation etc., of Trade Unions of Public Officials」 such as limitation of right to organize and denial of right to strike and request improvement of them. However, especially after inauguration of Lee Myung Bak Government, such denial and limitation of the fundamental labour rights of government employees and teachers are still going on in more serious forms.

1. Suppression on Public Officials' Freedom of Expression.

In June, 2009, Korean Government Employees Union (KGEU), Korean Democratic Government Employees Union (KDGEU), and Korea Court Workers Union (KCWU) discussed State-of-Affairs Declaration together and the government decided this to be illegal. In order to denounce the government's action, the KDGEU published a newspaper advertisement under the title of "We want to become civil servants of the people, not of the government"(13 July, 2009) and members of those unions participated in a rally for "Restoring Democracy and Improving People's Livelihood," in which even main opposition Democratic Party and three other major opposition parties participated. After this, the government sued and reprimanded government employees who participated in the rally and published the advertisement. The government sued 16 and directed governmental bodies to which concerned officials belong to discipline 105 employees (so far 57 disciplined, including 18 dismissed). On 1st December, 2009 the police made a raid into the KGEU's office

and charged 5 leaders and investigated 60 of union activists for distributing leaflets and participating in the National Workers' Rally organized by KCTU on 8th November, 2009. The government announced that it will revise the public officials work rules so that any comments in cyberspace, including the KGEU website, that are deemed to violate government employees' obligation to stay politically neutral and in violation of work rules will be banned and it has a plan to conduct an intensive crackdown from May. The Ministry of Public Administration and Security made a request to reprimand the former president of the steering committee of the Korean Unified Government Employees' Union, an integrated union, for having "People's ceremony," which is to pay tribute to democracy martyrs, instead of the national ceremony in union meetings.

2. Suppression on the amalgamation of 3 public officials unions and its accession to the KCTU

From 21st~22nd September, 2009, 3 public officials unions conducted general direct ballot of its members for amalgamation into one union and its accession to the KCTU (Result- 90% support for the amalgamation, 66.1%, for accession). The government mobilized the Ministry of Public Administration and Safety, state and local government and even the National Intelligence Service to interfere in the process of the ballot (to interfere setting up ballot boxes inside the government buildings and prohibit union members from voting during work hours). After this, it maneuvered central administration institutions including National Election Commission into forcing their employees to withdraw from the union. The government instructed several governmental organizations to discipline 29 labor union officials (among them, eight faced heavy discipline) because they were involved in so-called "illegal labor union activities," which actually was advertising a union ballot on the integration of the three unions. The similar suppression happened during the general direct ballot for revision of its statute on 23rd and 24th February, 2010.

3. Cancellation of (former) KGEU's Establishment Report and Return of (merged) KGEU's Report

The Ministry of Labour cancelled the (former) KGEU's Establishment Report on 20th October, 2009 with the reason that 4 dismissed workers were working as union officials and on the same day the Ministry of Public Administration and Safety notified that it exclude KGEU from the right to bargain with the government and made a request to the central government bodies and local government of coercing of the union's regional offices, suspension of collective bargaining and cancellation of existing collective bargaining agreement, prohibition of check off of union dues and return to work of full-time union officials.

On December 4, the Labor Ministry returned the application to register the Korean Government Employees' Union (KGEU). The labor union understands that the Labor Ministry unlawfully exerted approval authority by forcing the union to complement the application which usually registration itself is sufficient to make. However, the labor union decided to apply for the registration again after complementing some of it to avoid unnecessary conflict with the government and to stabilize public official community. In order to make sure that the KGEU's statute is line with requirements from the government, should the government once again reject union establishment registration, the KGEU revised its statute through a general direct ballot of its members on 23rd and 24th February, 2010. (68.5% went to the ballot and 91% voted in favour.) The revised statute was submitted to the Ministry of Labor on 25th February, 2010. However, the registration was returned once again on 3rd March, 2010, on the basis that dismissed workers as well as those in grade 6 in semi-managerial positions were still members of the union.

4. Illegalization of KGEU

On 24th March, MOPAS stated KGEU to be an illegal organization, on the basis of its inauguration rally on 20th March. It also said that government employees who had participated in the rally will be identified and dealt heavy disciplinary measures. It also declared that all activities performed in the name of the union, including History Tour in Cheju will be branded illegal.

5. Retrogressive Revision of Laws and Investigation against Union Activities

On November 24, the cabinet meeting issued a bill to revise government employees' working rules so that "public officials are banned from opposing government policies." And it revised the regulation on the remuneration of public servant to strengthen the provision on deduction of union due from paycheck. Futhermore, the government is trying to make a legislation to prohibit public servants in the National Election Commission and the courts from joining and forming unions and government employ's union from affiliate to umbrella organizations. The police and prosecutes are investigating 293 union officials of KGEU and KTU suspecting them to violation of the State Officials Act, Political Funds Act on the ground of documents which the police collected by illegal hacking.

6. Repression against KTU's State-of-Affairs Declaration

On 18th June 2009, around 17,000 teachers issued an Emergency State-of Affairs Declaration calling for democratization of school management, support for low-income family students, human rights for students, government's apology for abuse of authority, freedom of expression, and support for the socially vulnerable

and complete withdrawal of the Grand Canal project. On 26th June 2009, the Ministry of Education, Science and Technology (MEST) convened a meeting of regional education superintendants and ordered them to heavily discipline and sue Korean Teachers and Education Workers Union (KTU) officials for mobilizing signatories to the Declaration. At 5am on 3rd July, around 50 police officers from the Seoul Metropolitan Investigative Task Force, under directions from the Seoul Central Prosecutors Office, raided the KTU headquarter as well as the Seoul Branch office, confiscating KTU's intranet server and even personal diaries. It is the first time since KTU's establishment to undergo such a raid.

On 19th July, the KTU galvanized 28,600 signatures and issued a second Declaration, expressing support for the previous Declaration as well as condemning repression on the union. In response, on 31st July, the Minister of MEST announced plans to impose disciplinary measures for 89 union officials (22 dismissed and 67 suspended). This kind of strong measure from the MEST is clearly anachronistic – it is reminiscent of repression that took place during the dictatorships of Chun Doo-Hwan and Roh Tae-Woo.

MEST argues that the Declaration violated the bans on collective action stipulated in the State Officials Act and on political activities in the Teachers Union Act. However, according to legal experts affiliated to Lawyers for a Democratic Society (Minbyun), MEST's arguments contravene legitimate freedom of expression of teachers as well as politically repress basic rights of teachers.

On 19th January 2010, Kim Gyun-Tae, a judge from the Jeonju District Court, ruled 3 indicted KTU Jeonbuk Branch officials to be innocent. In his ruling, he said that the Declaration, which calls on the government to overhaul its governance, so as to reverse its politically motivated use of police force in order to limit freedom of expression and guarantee human rights, so as to be more democratic rather than authoritarian, and so as to regain confidence from its citizens, was simply a culmination of the opinion of various individuals who were conveying their concerns over and hopes for their government. He said that the main aims were asking for better governance based on the constitution.

Nonetheless, prosecutors continued their dragnet-like investigation, including tracking financial transactions, emails and mobile phones of 800 KTU officials. After the ruling from the Jeonju District Court, the Youngdeungpo Police Station, on 25th January 2010, said that it had found and had continued to investigate into allegations of illegal political activities in regard to the Declaration, and that they were sending subpoenas to 190 KTU officials for giving financial support to the Korean Democratic Labour Party (KDLP). The excessively exhaustive additional investigation of the prosecutors, illegitimate disclosure of information by the police and suspicions regarding illegal hacking of KDLP website are clear evidence of the government's political crackdown. On 2nd March 2010, Youngdeungpo Police Station concluded that prosecutors should indict 188 KTU members, and on 29th March, the first hearing on KTU's president, Jeong Jin Hoo, and other 23 officials took place. By labeling KTU's Declaration a political act, the government has abused the State

Officials Act, Political Funds Act, Political Parties Act and the Teachers Union Act, which ban political activities of government officials.

7. Negation of Fundamental Labour Right of Teachers

Violation of rights by ordering revision of KTU by law

On 12th February 2010, Ministry of Labour requested the Labour Commission to order revision to KTU's bylaws, citing that 6 sections of the bylaw violate the Teachers Union Act, in that they allow dismissed workers to become union members. The Labour Commission deliberated on the issue on 10th March and concluded that the 6 sections were indeed unlawful, siding with the Ministry. The Ministry then declared KTU's bylaw to be unlawful on its website (24th March) and then, on 30th March, sent an Order for Revision of Bylaw to the KTU. KTU's bylaw has never been an issue ever since its legalization in 1999. However, the government is now raising an issue with the KTU bylaw on basis of its membership eligibility of dismissed workers, just after having dismissed workers in regard to their Declaration.

Cancellation of collective bargaining agreement with KTU

In Korea, there are 4 teachers unions. The KTU is the largest union (accounting for 98.5% of teachers affiliated to the 4 unions and amounting to 69,500 members as of December 2009) and has consistently fought for educational reforms, democracy and human rights. After its legalization in 1999, the KTU underwent collective bargaining several times with the MEST and regional education offices, and the parties agreed on wages, working conditions, welfare and overall socio-economic status of teachers, signifying official recognition of KTU by the government. Furthermore, in order to reflect Education International (EI)'s aim of 'Quality public education for all', the KTU included in its CBAs measures to realize rights of students to equal and lifelong education, and quality public education. However, in June 2009, MEST cancelled the CBA it had signed with KTU while 11 regional education offices also unilaterally cancelled CBAs with KTU regional branches.

Ministry of Labour's enforcement of revisions to the CBA

On 24th March 2010, Ministry of Labour issued a press release through its website that 33.5% of CBAs of 6 KTU regional headquarters (Busan, Gwangju, Gyeonggi, Jeonnam, Jeonbuk, Jeju) are unlawful, forewarning that it will order revisions to the CBAs with KTU. According to the Ministry, many of the clauses in the CBA are in fact un-negotiable, and although the Teachers Union Act does not limit bargaining scope, the Public Officials Union Act, which covers all public officials (and limits bargaining scope), should be applied this case. In September 2009 and February 2010, KTU asked the Ministry whether it would be possible for the majority union to become the bargaining representative should other teachers unions fail to unify their

bargaining channel, as allowed in general labour laws. (Korean Liberal Teachers Union has 536 members, Korean Union of Teaching and Educational Workers has 475 and Korea Teachers Union has 19 members.) However, at that time, the Ministry replied that the Teachers Union Act should not follow general labour laws. In other words, the government is making arbitrary decisions – that the Teachers Union Act can sometime follow general labour laws but sometimes not.

In June 2000, the Supreme Court ruled that “Even if a CBA, which is a contract signed by a trade union and an employer or an employer group regarding various issues that may arise from employment relations including working condition, loses its efficacy, the contents of the CBA remains effective as individual work contracts and discipline labour-management relations, until a new CBA is concluded, work regulations are written up or workers agree to the changes.”

5-4. Restriction on the Right to Strike of Public Sector Workers by Maintenance of Essential Services and Suppression on the Railway Workers’ Strike

In previous days, Compulsory Arbitration System in Essential Public Works which was stipulated in TULRAA was criticized to be excessive restriction 3 basic labour right and the ILO repeatedly recommended its improvement. The Compulsory Arbitration System was repealed when TULRAA was revised on 1st January, 2008. But the revised law introduced a new system, Maintenance of Essential Services in the Public Works and broaden the range of Public Works where the system is applied (air transportation and blood supply was added to railway, electricity, gas, refining and distribution of oil, hospital, the Bank of Korea, telecommunication). Even it prohibits certain workers who maintain the essential services from joining strike and permits replacement of workers (up to 50% of strikers), and results in nullification of right to strike.

Suppression on Railway Workers in November 2009

Korail and Korean Railway Workers Union(KRWU) began their collective bargaining to renew the regular collective bargaining agreement on 28th July, 2008. However, Korail avoided the bargaining in good faith and unilaterally canceled the CBAs. Korail staged a strike on 26th November, 2009. In Korea, the government interprets the right to strike very narrowly and considers all political strike illegal. And Maintenance of Essential Services, which was enforced on 1st January, 2008 restricts the right to strike of public sector workers. Nevertheless, KRWU abided by the evil law when they were striking. In terms of maintenance of essential services, the workers who maintain essential services didn’t join the strike and during rush hour 100% of trains were operated. In terms of object of strike, the strike was on revision of collective bargaining

agreement and wage system which would worsen working conditions, so it was not a “political strike”. The strike was totally lawful in terms of subject, procedure, objective, etc.

President Lee Myung-bak, however, considered this strike illegal without no reason, saying "No compromise to the union" the prosecution issued arrest warrants against major 28 leaders of the union. The KRWU workers ended the strike returned to workplace on December 3. Twenty eight union officials to whom subpoenas were issued appeared in police. The strike was totally legal so that they were not subject to lawsuits, but President Kim Ki-tae and Vice President Kim Jung-han were arrested on 13 and 15 December. Because there was no violation of existing labor laws leadership were arrested on a charge of "obstruction of business." The Korail sued the union for compensation of damage of 9.8 billion KRW and took disciplinary measure against 11,000 of union members. On December 16, media presses discovered that Korail intentionally induced the strike to collapse the labor union.

The CEO of Korail has not attended at the bargaining table yet and only those who don't have real authority have been sitting at the table. In the situation the existing collective bargaining is to be expired on 24th May, 2010, Korail request KRWU to accept retrogressive revision of 120 categories of CBAs on working conditions. KRWU considers that industrial action is unavoidable because it can't accept any deterioration of working condition. Thus, it seems that Korail strengthen the suppression on the union abusing the article 314 of Criminal Code (Obstruction of Business) and put pressure on the Labour Relation Committee and the Court.

<Table 5-1> Suppression on the Strike of KRWU

| Charge against Obstruction of Business | Lawsuit for Compensation of Damage | Provisional Seizure | Disciplinary Measure |
|---|------------------------------------|--|--|
| 662 members who joined the strike or press conference, union congress, etc. | 9,650,000,000 KRW | KRWU union due account and building etc. | Total striking workers (the largest in history) Dismissal: 195, Deprivation of Position: 949, Suspension; 599, Wage cut: 9,799, Reprimand: 970. |

*Source: Korail's answers to the questions raised by Lawmaker Hong Hee-deok on March 25 2010

<Table 5-2> Comparison on Disciplinary Measures taken by Korail against Strike

| Measures Year | Dismissal | Suspension | Pay cut | Reprimand | Caution | Total |
|--------------------|-----------|------------|---------|-----------|---------|--------|
| 2002 | 21 | 1 | | | | 22 |
| 2003 | 79 | 71 | 113 | 244 | 3 | 510 |
| 2006 | 9 | 55 | 109 | 111 | 111 | 395 |
| 2010 (As of March) | 195 | 599 | 9,799 | 970 | | 11,563 |

*Source: 7th January, 2010 A Written Report Submitted to the National Assembly by Korail according to Request from Rep. Kim, Jin-ae

5-5. Criminal Penalty and Civil Suit Applying “Obstruction of Business” under the Criminal Code against Normal Union Activities and Abuse of Police Force

In Korea, imprisonment of workers is still using being used as powerful method for suppression on union activities. Among others, imprisonment against the article 314 of Criminal Code (Obstruction of Business) happens the most frequently. At the same time, the practice that employers sue for compensation of damage against trade unions or individual members continues. Once a strike is considered to be unlawful, trade unions and individual workers are sued for huge amount of compensation. Compensation of Damage and Provisional Seizure is a violation of trade union rights and result in destruction of family and life. It is a serious social problem. Excessive police force is sent into every strike thus fundamental labour rights and basic human rights are too frequently infringed.

ILO repeatedly recommended that the Criminal Code be revised to be in line with the principle of Freedom of Association from the position that no one can be charged with criminal code or deprived his/her freedom with the fact that he/she organize and join peaceful strike. UN Committee on Economic, Cultural, and Social Rights expressed its concerns that the laws regarding strike is not transparent and the decision around lawfulness of a strike depend on related institution, in its final view in 2002. The committee also expressed its point of view that the Korean governments’ approach which criminalizes strike wasn’t acceptable. In 2009, the committee indicated that the government had been using the article 314 of the Criminal Code as a systemical means for weakening the right to strike.

Abusing Police Force and Punishment Applying “Obstruction of Business” to Ssangyong Motors Workers Strike in 2009

Ssangyong Motors Branch of Korean Metal Workers Union (KMWU), one of KCTU affiliates conducted sit-in strike occupying paint facilities in pyeong-taek factory in Gyeong-gi Province from May 22 to August 6, 2009 to protest against the company's mass lay-offs. 1,500 workers were participating in the strike. Hence, the company hired a total of 380 security guards from June 7 to July 6, and tried to forcibly enter the plant with the security guards. These hired guards used indiscriminate violence to the workers during the suppression, yet the government connived with the incident. When the workers put up a stubborn resistance, the company cut water and electricity supplies. The workers suffered from stress injuries in a desperate situation, where not even medical teams and daily necessities could go into.

And on August 4, the government began a crackdown on the workers. 2500 riot polices and 25 squadrons were dispatched to suppress the protest, and they were armed with shields, clubs, rubber bullets, and even iron pipes and taser guns. Spraying tear gas into the air throughout the crackdown, the riot police threatened the workers with forklift trucks, sprinkler trucks, and the containers holding SWAT teams inside. The total amount of tear liquid the police sprayed was 2041.9 L, and it included some agent which causes cancer.

After the company announced its mass lay-offs plan 4 of the union workers and 2 of their family members were driven to death by cerebral hemorrhage, myocardial infarction of suicide. 94 workers were charged against “Obstruction of Business” under the Criminal Code and placed under arrest, with 22 among them sentenced to imprisonment. Many of the workers who got kicked out after the strike have been trying to get another job, but it is not easy for them to even dream of it due to the social stigma. A lot of them are currently working as temps or day laborers, and are suffering from another kind of stress.

5-6. Negation of Fundamental Labor Rights of Specially Employed Workers

In Korea, specially employed workers are assumed a self-employed status, but in reality they are just like other employees providing labor to their employer permanently. However, their legal status is neither 'employer' nor 'laborer' and they are in a blind spot of labor law. Particularly, Remicon (ready-mix concrete: cement mixer) drivers, insurance sales people, golf caddies, and home-visit teachers used to be employed directly under employer and signed labor contract with their employers in the past. But, because of labor management convenience and cost reduction measure strategy by employers, they were forced to become special employment workers in a form of self-employment. With the expansion of service industry and diversification of employment form, special employment is being expanded, and these workers are suffering from worse labor condition than that of other irregular workers. They are in dire need of protection from the labor law.

The National Human Rights Commission made a recommendation to Congress and the Labor Ministry to revise the law to guarantee the three basic labor rights and four major social insurances to specially employed workers in Oct. 2007. However, the current government failed to make mention of a plan to legislate a law to guarantee labor rights to specially employed workers at all and are repressing of Korean Construction Workers Union and Korean Transportation Workers Union by reason of these unions are including specially employed workers.

1. Suppression on KCWU and KTWU regarding Union Certificates

On 19th September, 2000, 13 remicon workers established <Korean Construction Transport Workers Union> and got legal recognition from the Ministry of Labour. After this union took a leading role in the struggle for fundamental labour right of specially employed workers. As a result of this struggle KSTWU has been recognized as a negotiation partner by the government and the employer. The union has been joining several consultation bodies and has been signing collective bargaining agreement in various construction sites. The government has fully recognized the legal status of the union.

On 2nd March, 2007, the union transformed into Korean Construction Workers Union which included all kind of workers in construction site such as drivers of remicon, dump truck, tower crane, etc. Now the union is promoting establishment of an industrial union by merging with Korean Plant Construction Workers Union. In is backdrop, the government are trying to return union establishment report of KCWU, in order to debacle the union, using the reality that this union consists of specially employed workers.

On 26th October, 2008, employers including the Korea Employers Federation filed a petition against KCWU and KTWU of KCTU to the Ministry of Labor claiming that "dump truck and remicon truck drivers are not just drivers, but the owners of trucks and therefore they cannot be considered worker. Allowing the owners of trucks to join a labor union is the same as permitting a non-worker as specified in the Labor Relations Adjustment Act and therefore, it is against the law." With regards to the petition, the Ministry of Labor conducted an investigation of KCTU membership unions excluding FKCTU locals, which also have dump truck and remicon truck drivers as members. After the investigation, KCTU was ordered to voluntarily correct the issue by the Ministry of Labor. The Ministry of Labor sent a notification to KCTU that if KCTU fails to abide by the Ministry's recommendation to make corrections by 2nd February, 2009 the Ministry will use force to make it make the corrections and warned that it will proceed in declaring KCWU an unlawful labor union. On 5th February, 2010, the Ministry of Labor sent the official letter and ordered the union to cancel the union membership of specially employed workers in the union once the union reported some changes in their union establishment report including change of the representative. This is a denial of the right to organise existence of a union which has legal recognition already. The government is also suppressing the Korean Transport Workers Union (KTWU) with the same ground.

2. Abuse of police force during strikes of Korea Express workers

Parcel delivery workers are representative form of specially-employed (disguised) workers. Before 1997, they were employed as workers under the Labour Standards Act, and thus had employment contracts. However, they were told by the company that they cannot continue to work unless they register as a business and use their own vehicles. They then signed an outsourcing contract with delivery service companies and were paid a commission per parcel delivered rather than a proper wage. In other words, they were forced (the company says voluntary) to become workers disguised as self businesses. They are not recognized as workers, denied their fundamental labour rights, negated access to insurances, work 14-hour workdays, get low pay and are forced to perform jobs outside their contracts. Because these workers are seen as self businesses, the government has consistently ignored their grievances including the prevalence of illegal subcontracting and has refused to recognize them as workers. It has turned a deaf ear to calls for fundamental labour rights and has instead repressed their freedom of association and their right to union activities. Furthermore, they are denied their right to freedom of assembly and demonstration. Furthermore, the government tried to break the strike by issuing a “Return-to-work order”, which is only supposed to be issued to state government officials, doctors or others who deal with human life. However, the government extended this order to parcel delivery workers, thereby forcing provision of labour and thus violating ILO Convention 105.

Korea Express unilaterally breached agreements made with their parcel delivery workers and sent out mobile SMS to notify dismissal of workers. The workers, who felt they were unjustly fired, tried to hold negotiations with the management, however, the management refused to talk. In the meantime, the police arrested workers who were holding peaceful demonstrations and even stopped one-person demonstrations. Union activities were incapacitated. Members constantly suffered harassment and violence from the management and the police, at which Park Jong-Tae, a member of Korea Express Parcel Delivery Chapter of Korea Transport Workers Union Freight Workers Solidarity (FWS), whose arrest warrant was issued, took his own life in protest. His body was found on 3rd May 2009.

Even though the circumstances were so dire, the management continued to ignore the demands of workers, at which the FWS decided to go on a general strike, after a congress on 16th May 2009. The FWS also decided to hold a national rally in Daejeon. At the rally, the police used water cannons and tried to forcefully disperse the workers. Around 10,000 demonstrators and dozens of police clashed.

In particular, the police arrested 457 workers who were on their way home after the rally was over, during which 100 workers were injured. Some workers were arrested walking home or in the bus, or even inside restaurants, just by the fact that they were wearing union jackets and raincoats. Because of the sudden mass

arrests, around 400 arrestees were held and investigated in a sports stadium due to lack of lock-up facilities. During this process, official investigation procedures were ignored.

Among those arrested, 20 were detained and many others were indicted without detention. Even now, many participants are still being indicted without substantial evidence, forced to undergo lie detectors, and put under additional investigation during court proceedings. Many workers are suffering from economic and psychological difficulties due to income instability, while their freedom of association, assembly and expression are being denied as well as their labour rights.

<Table 5-3> List of Imprisoned Workers (As of 10th April, 2010)

| | Name | Union | Case | Date of Arrest | Status |
|---|-----------------|----------------------------|--|----------------|--|
| 1 | Cheon, Chun-bae | KTWU-CTWC, Busan Branch | Cargo Transportation Workers' Strike (June, 2008) | Oct 21, 2008 | Convicted (one year imprisonment with 8 months' probation) |
| 2 | Cho, Ik-ryeol | KTWU-CTWC, Busan Branch | People's Commemoration Rally for Park Jong-tae(16th May, 2009) | May 18, 2009 | Appealing to the Supreme Court (sentenced one and half year imprisonment) |
| 3 | Kim, Wan-hee | KTWU-CTWC, Chungnam Branch | People's Commemoration Rally for Park Jong-tae(16th May, 2009) | June 12, 2009 | Convicted(one and half year imprisonment) |
| 4 | Kim, Dal-shik | KTWU-CTWC | Cargo Transportation Workers' Strike (11th June, 2000) | July 6, 2009 | Appealing to the High Court (sentenced 2 year imprisonment) |
| 5 | Lee, Ki-ho | KCWU | Workers Rally to support Ssangyong Motor Workers' | July 28, 2009 | Appealing to the High Court (sentenced one and half year |

| | | | | | |
|----|-----------------|-----------------------------|--|-----------------|---|
| | | | Strike(2009) | | imprisonment) |
| 6 | Kang, Dong-hwan | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 7 | Kwon, Sun-man | KMWU | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 1 year and 2 month imprisonment) |
| 8 | Kim, Hyeok | KMWU | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 9 | Kim, Deuk-jung | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 10 | Kim, Jae-whan | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 11 | Kim, Jeong-wun | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 12 | Choi, Ki-min | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 13 | Han, Sang-kyun | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 4 year imprisonment) |

| | | | | | |
|----|----------------|--|--|-------------------|--|
| 14 | Han, Il-deung | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | August, 6, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 15 | Kim, Su-eok | KMWU Kia Motors Branch , Subcontract Workers Chapter | Strike of Precarious Workers in Kia Motors(2007) | August, 7, 2009 | Convicted (2 and half year imprisonment) |
| 16 | Lee, Deung-woo | KMWU Kia Motors Branch , Subcontract Workers Chapter | Strike of Precarious Workers in Kia Motors(2007) | August, 7, 2009 | Convicted (2 year imprisonment with 6 months' probation) |
| 17 | Yun, Chang-ho | KTWU-KCTWU | Cargo Transportation Workers' Strike (11th June, 2000) | August, 9, 2009 | Appealing to the High Court (sentenced one and half year imprisonment) |
| 18 | Kim, Seon-yong | KMWU Ssangyong Motor Branch | Sit-in Strike against Mass Lay-off(2009) | September 7, 2009 | Appealing to the High Court (sentenced 3 year imprisonment) |
| 19 | Kim, Ki-tae | KRWU | KRWU's Strike(2009) | December 13, 2009 | pending |
| 20 | Kim, Joo-chul | KCTU Ulsan Regional Branch | Tugboat Workers' Strike(2009) | December 29, 2009 | pending |
| 21 | Kwon, Ki-baek | KMWU Ulsan Regional Branch | Tugboat Workers' Strike(2009) | December 29, 2009 | pending |
| 22 | Lee, Kwang- | KTWU-CTWC, | People's Commemoration Rally | January 31, | pending |

| | | | | | |
|----|-----------------|---|--|----------------|--|
| | nam | Daejun Branch | for Park Jong-tae(16th May, 2009) | 2010 | |
| 23 | Park, Jin-soo | KMWU Kia Motors Branch, Whasung Local | Protest against Safety Accident in Kia Motors (2009) | Feb. 18, 2010 | Appealing to the High Court (sentenced 6 month imprisonment) |
| 24 | Jeong, Jin-yong | KMWU Kia Motors Branch, Whasung Local | Protest against Safety Accident in Kia Motors (2009) | Feb. 18, 2010 | Appealing to the High Court (sentenced 6 month imprisonment) |
| 25 | Cheon, In-cheol | KMWU Kia Motors Branch, Whasung Local | Protest against Safety Accident in Kia Motors (2009) | Feb. 18, 2010 | Appealing to the High Court (sentenced 7 month imprisonment) |
| 26 | Jeogn, Yeon-jae | KMWU Kyeongju Valeo-Mando Local | Protest against Lockout of Valeo mando (2010) | March 16, 2010 | pending |
| 27 | Lee, Kyung-soo | KMWU Kyeongnam Regional Branch, Daelim Motors Local | Sit-in Struggle against Mass Lay-off (2010) | March 19, 2010 | pending |
| 28 | Han, Hyo-sup | KMWU Kyeongju Riginal Branch | Protest against Lockout of Valeo mando (2010) | March 26, 2010 | pending |
| 29 | Shin, Si-yeon | KMWU Kyeongju Riginal Branch | Protest against Lockout of Valeo mando (2010) | March 26, 2010 | pending |

* Source: Committee to Support Imprisoned Worker

KTWU-CTWC: Korean Transportation Workers Union-Cargo Transportation Workers' Center

KMWU: Korean Metal Workers Union

KCTU: Korean Confederations of Trade Unions

KCWU: Korean Construction Workers Union

5-7. Unilateral Cancellation of Collective Bargaining Agreements

The TULRAA stipulates that one party of labor or management can cancel the valid CBAs through unilateral notification before 6 months. This provision was introduced in 1998 with legalization of mass lay-off, and infringes the right to bargain collectively which is guaranteed by the Constitution and are being misused by employers for the purpose of repression of unions. Lee Myungbak government is promoting cancellation of CBAs in public sector aggressively, and it is spreading to private sector rapidly. In 2008 and 2009, there were 12 cases in public sector, 11 cases in metal industry, 4 cases in finance industry, 3 cases in private services industry, 4 cases in hospitals, 11 cases in elementary and secondary schools, 1 case in university of unilateral cancelation of CBAs.

5-8. Korean Government's Rejection on the Migrants Trade Union (MTU) and Registration and its Targeted Crackdown on MTU Officers.

Korean government has refused to recognize MTU as a legal union in 2005. Its main argument is that MTU's membership is made up of undocumented migrant workers, and thus says do not have the right to form or participate in unions. In fact, MTU membership includes documented and undocumented migrant workers, who are all struggling for our rights together. Moreover, in both Korean law and international law, all workers are entitled to the right to freedom of association, regardless of their social status, and freedom of expression.

Therefore, in 2006 the Seoul Higher Court recognized MTU as a legal union. The government, however, has appealed this decision to the Supreme Court and has shamelessly targeted our leaders for arrest and deportation in an attempt to smother our union. MTU's leadership has been arrested 3 times in April 2005, November 2007 and May 2008.

5-9. Recommendation

- TULRAA should be revised to be in line with the international labour standards: Leaving wage payment for full time union officials as a matter of free and voluntary negotiation between labour and management, abolishment forced bargaining channel unification.
- Excessive government's intervention to trade unions should stop and fundamental labour rights of teachers and public servants should be guaranteed.
- All laws which have provisions to prohibit teachers' and public servants' political activities should be revised.
- Maintenance of Essential Services System which restricts the right to strike of workers in Public Sector should be improved to be in line with the international labour.
- Specially employed workers should be recognized as employee and laws to protect their rights should be prepared according to the international standard including related ILO recommendation.
- The practice of arresting and imprisoning workers on the ground of their union activities and suing for compensation of damage applying "Obstruction of Business" should be improved.

CHAPTER 6. FREEDOM OF OPINION AND EXPRESSION AND THE INTERNET

6-1. Overview

In 2008, the internet users in Korea were 37.48 million comprising 77.8% of the whole population. Except for a few public access channels, the media is not easily accessible to the public. The Internet is an indispensable medium of expression for the Korean public.

In May and June of 2008, candlelight vigils fueled a growing controversy in Korea. The public opinion protested importation of US beef feared to be infected with bovine spongiform encephalopathy, otherwise commonly known as the mad cow disease. The internet played a crucial role in bringing the participation of ordinary individuals such as housewives, youth and workers who spend half of their day at school or work. Through online communities and blogs, they conducted discussions, arranged their thoughts, and organized actions. The Internet provided a means to self expression and empowerment to these students who lack social and economic resources.

However, the controversy of the violation of freedom of expression on the internet is deepening recently as administrative regulation and criminal prosecution are strengthening against the citizen's postings of free expression on the internet. Since the beginning of the Lee Myung-bak administration, the Korea Communications Standards Commission (KSCS)'s administrative deliberation has heightened and the cases of criminal prosecution for false communication and defamation have increased. Any postings criticizing the police and the ruling party have been subject to deletion in the pretext of privacy violation and defamation and the 'mandatory internet real-name registration system', which allows registered users with confirmed real names to upload postings, has been expanded.

After the Lee Myung-bak administration took office in 2008, restrictions on Internet postings and criminal prosecutions are increasing. In addition, while discussing in the National Assembly, the government and the ruling party are proposing new laws to strengthen the internet regulations. The government levies fines on internet service provider that don't comply to the temporary deletion request and allows monitoring, and is cementing the implementation of the 'Real-Name Registration' system. Ruling party members created cyber insult crime which allows investigation without accusation giving more punishment over slander. They also passed the law obligating the internet service providers to equip themselves without monitoring tools and data retention to store the list of people who log in.

Likewise, these internet regulations is a serious violation to freedom of expression and opinion as it brings a chilling effect on people by seeing the posters' freedom of expression being violated, self-censorship is becomes naturally enforced.

6-2. Arbitrary Administrative Deliberation

In the 1990s, the administrative deliberation system on media such as movie or music has been abolished during the Korean democratization process. However, the administrative deliberation on the internet has persisted since the launch of the commercial internet service in 1994 by the former Information Communication Ethics Committee (ICEC) until now. In particular, in 2008, since the establishment of the Korea Communications Standards Commission (KCSC) by the new government, administrative deliberations on critical internet postings and subsequent posting deletions are becoming common place.

On the user's administrative litigation, the KCSC asserts that its request to delete postings is just a recommendation without force. But, by the facts that the members of the KCSC are appointed by the president, the matters of the organization and the management of the KCSC is decided by a presidential decree, and the expenses for the management are provided by government's fund and subsidies, the court of first instances acknowledged the KCSC as an administrative institution.

If the online service providers or maintainers reject the KCSC's recommendation, then the KCSC can issue administrative orders to suspend the websites, so the cases of noncompliance are rare. According to the KCSC, since its establishment until December 2009, the percentage of compliance comprise up to 99% (from 32,468 out of 32,640).

The KCSC conducts online deliberations for purposes of controlling illegal information and online content harmful to minors based on standards of "fostering healthy communications ethics." It is a clear violation of freedom of expression when the administration arbitrarily judges and deletes postings under undemocratic and opaque process.

Firstly, it is provisional that the administrative, not the judiciary institution, determines unlawfulness of acts. Moreover, the KCSC's deliberation targets the online service providers or maintainers, not the person concerned, by which the concerned person's testimony is not guaranteed. In July 2008, the KCSC determined the postings written by consumers calling for a boycott to be "unlawful second boycott, and issued a decision to 'delete'" them. The concerned posting contained the list and the phone numbers of the companies with advertisement in conservative daily newspapers Chosun, Joongang, and Dong-A to boycott them for reporting "with a bias on candlelight vigils." In April 2009, the KSCS decided to delete the posting of an environmental activists criticizing "carcinogenic waste cement" on the grounds for defaming the cement companies. In February 2010, the Seoul Administrative Court judged for the deletion to be canceled, but the KCSC appealed so the trial is still going on.

In particular, public criticisms have greatly decreased due to the KCSC deleting the posts criticizing the government and the officials on grounds that they are unlawful. According to the March 2009 commission

statistics, 12 politicians and government officials requested deliberations for defamation since the commission's beginning in 2008 and 10 of them are ruling party politicians and incumbent administration officials. The commission ordered deletion in 8 (72.2%) out of 11 defamation deliberation cases and the portal websites removed 203 related articles. The commission ordered the 'deletion' of a posting that criticized a Gyeonggi province governor's statement as pro-colonial and demanded his resignation in January 2009 and the posting that criticized the Seoul Mayor for giving out military goods at a Veteran's Association in July 2009, both on the pretext of defamation. The police has aggressively requested to the KCSC to delete any postings that criticized them and the government. In July 2008, when this request got exposed to the public, it evoked public criticism. The KCSC decided to delete some of them. In June 2009, the KCSC decided to delete a posting which contained a photo of a police striking a citizen participating in a demonstration on Labor Day on grounds of portrait right violation.

<Table 6-1> Report of KCSC's correction request on false information (Duration: establishment ~ Feb. 2010)

| Classification | Total | Deleted | Usage terminated | Usage Stopped | Access denied | Display obligation executed | Display method changed |
|----------------------------|--------|---------|------------------|---------------|---------------|-----------------------------|------------------------|
| Obscenity | 4,638 | 2,698 | 1,374 | 13 | 553 | 0 | 0 |
| Defamation | 2,116 | 2,113 | 0 | 0 | 3 | 0 | 0 |
| Cyber stalk | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hacking/Virus | 22 | 21 | 0 | 0 | 1 | 0 | 0 |
| Material harmful to minors | 116 | 0 | 0 | - | - | 50 | 66 |
| Speculation | 12,585 | 173 | 3,732 | 0 | 8,680 | 0 | 0 |
| State secret leakage | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | |
|--|--------|-------|-------|----|--------|----|----|
| Violation of the National Security Act | 1,569 | 1,553 | 2 | 0 | 14 | 0 | 0 |
| Other criminal acts | 7,422 | 2,777 | 3,428 | 0 | 1,217 | 0 | 0 |
| Total | 28,468 | 9,335 | 8,536 | 13 | 10,468 | 50 | 66 |

* Source : Korea Communications Standards Commission (KCSC)

Next, deliberations based on standards of “fostering healthy communications ethics”, rather than on unlawfulness, are unconstitutional. With this kind of standard, on May 2008, the KCSC issued a recommendation to “refine language and refrain from exaggerated expressions” to an online posting labeling the president ‘2MB’ and ‘wicked person’ among others initials which disparaged his character. Excessively regulating freedom of expression on vague standards violates the 2002 Constitutional Court decision. The former Korea Internet Safety Commission supervised the management of ‘improper communication’ and received much censure for conducting arbitrary deliberations, for example, shutting down an online community consisting of students who dropped out of school for being too critical of schools.⁶ A decision from the Constitutional Court in June 2002 found that it is unconstitutional for the commission to conduct deliberations with the vague “improper” standard. “Fostering healthy communications ethics” is also under fire for the same reasons.

6-3. Criminal Prosecution of the Public Criticism

Since 2008, many Internet users have been criminally prosecuted for posting articles criticizing the government.

The public prosecutor’s office held an emergency conference after the candlelight vigils began on May 2 to announce plans for investigations on the ‘online urban legends on mad cow disease’ and the government published a list of “10 frequently asked questions and answers to the urban legends on mad cow disease” on its website.¹⁵ The government pointed out such statements as “mad cow disease can be transmitted through cosmetics, sanitary pads, and diapers among other products that make use of cows”, and “most Americans eat beef from Australia or New Zealand” and other such postings based on ‘groundless insecurities and misunderstandings’ to be urban legends. The government was much criticized for attempts to criminally

punish these ‘assertions’. Since the investigation on the mad cow disease urban legends till the present, there is a continuous stream of charges filed or police investigations on online articles containing material related to candlelight vigils or critical of the government.

The writers are often charged with ‘spreading false information’; this law was enacted in 1983 but hasn’t been invoked until the candlelight vigil investigations. But in May, 2008, the police and the public prosecutor’s office charged a youth with “spreading false information” after he sent out messages through his mobile phone and the Internet suggesting a school strike to protest the import of US beef. He was acquitted in court of the first instance and in the appeals court; the public prosecutor appealed to the Supreme Court and the case is still pending. The police and the public prosecutor’s office prosecuted netizens who spread rumors of police raping or killing citizens in the process of violently subduing protestors and taking them to the police station. Some have been convicted in the court of the first instance. In January, 2009, the netizen with the pseudonym ‘Minerva’ who posted articles online criticizing the government’s foreign exchange policies, was detained and prosecuted for violating the ‘false news provision’ This received much attention from the Korean and foreign media and had an adverse effect on the right to freedom of expression; other netizens also critical of the government successively gave up writing altogether. The court in the first instance acquitted him in April 2009 but the prosecutor’s office has appealed.

Many online café operators, rallying online for candlelight vigils protesting US beef imports and against netizens active in online cafes such as ‘baby carriage squads’, ‘candlelight car coalitions’, have been subject to search and seizure in their homes and workplace, to detention, and to criminal prosecution. In particular, the public prosecutor prosecuted and employed ruthless investigative tactics such as prohibition of departure, search and seizure, and detention on Internet café operators who posted a list of advertisers on daily newspapers Chosun, Joongang, and Dong-A as part of an effort to boycott the advertisers’ products. They were convicted in the court of first instance and appeals court, and now the case is still pending in the Supreme Court of Justice.

Recently, it is inciting controversy by the fact that the police and government prosecuting people criticizing their department on grounds of “defamation’. In July 2008, the police chief prosecuted a user on charges of “defamation” whose identity was revealed during internet debate on candlelight vigils. In the court of first instances, he was given suspension, but in the Supreme Court of Justice, he was found not guilty.

In May 2009, the police prosecuted a user, formally a riot police, who publicized the lyrics of the music satirizing riot police on the internet, on charges of prior production prohibition injunction and defamation, and requested civil compensation for damages. This case was dismissed by the court and the prosecutor. On the other hand, in March 2010, the Ministry of Culture prosecuted an internet user who distributed a media file of the figure skater, Kim Yu Na avoiding being hugged by the Ministry of Culture on charges of defamation. If

these kind of criminal prosecutions continue, even though the court would rule not guilty, it will lead to the chilling effect.

6-4. Temporary Measures on the Public Criticism

Postings with criticisms against the President, Government, ruling party politicians, or newspapers supporting the ruling party are immediately being deleted. This is based on current law which allows Internet businesses to delete postings for up to thirty days (without any legal intervention) if one reports that a certain posting has violated his privacy or has defamed one's character. If the internet business does not take these actions, it is liable for claims of damage. The temporary measure system is similar to the 'notice and take down' system of Copyright Law, but it differs in that the publisher does not have a right to make an objection and the rules are unclear about what happens to the posting after the temporary period of thirty days. Some businesses automatically revive the postings after thirty days, while others permanently delete the posting if there is not a request by the author. Thus, while one's posting may be unjustly deleted, it is hard to revive the right of the author due to complicated procedures and loss of confidence. Even after thirty days has passed and the posting is revived, the effect of the posting may be over after the thirty day period. The biggest problem of the system is that the government and the ruling party are using this system to quickly hide criticism coming its way.

In May and July, 2008, the police called for temporary deletion on the internet providers who posted up articles criticizing the younger brother of the Police Chief for charges of defamation, and they acted in accordance. This posting included a video which the Daejeon Broadcasting Company released about prostitution allegations in a certain hotel which the younger brother of Police Chief, Oh Chung Soo was an investor. The Police Department immediately requested fourteen Internet sites including Google and YouTube to delete the postings, but it did nothing to the Broadcasting Company- which was the original source. In May 2009, many postings were reported to be deleted by the police because they criticized the use of violence by the police. These postings criticized the police officers clubbed unarmed citizens during the Labor Day Gathering, and among the deleted postings there was a courteous public questioning from a blogger to a certain police high official.³² The police separately requested deliberation to the Korea Communications Standards Commission and in June a decision deleted the postings permanently.

In October 2008, a posting which described a certain politician of the ruling party as 'a drunken public nuisance' with an added link to his personal web page, was temporarily deleted according the request of the politician. In April 2009, another posting which criticized a ruling party politician as 'a monster wearing the skin of a human' was temporarily deleted according to that politician's request. In April 2009, some postings written by the opposition party and netizens on allegations of Chosun Ilbo's use of prostitution were also deleted. A posting uploaded by the Democratic Party member Jong-gul Lee was temporarily deleted by the

request of the Chosun Ilbo.³⁰ Politician Lee edited the posting to “XX Ilbo” but Daum temporarily erased this posting and asked the Korea Communication Standards Commission for deliberation. The commission decided that the posting did not defame the character of the individual and the posting was revived, but numerous other postings by other Internet users were deleted.

6-5. Presidential Election Period and freedom of expression and opinion on the Internet

As the expression of support or opposition to the formal candidate on the internet is viewed as “Election Campaign” in the Public Election Law, during election period, many internet users are prosecuted and many of their postings are getting deleted. According to Article 93(!) of the Public Election Law, it is prohibited to support or oppose the candidate 180 days before election day, and it is by this law that the internet postings, parody images, UCC (User Created Content) and twitter are regulated. During the 17th Presidential Election in 2007, the user who created 5 UCC episodes titled “Is President Lee Myung Bak Okay?” composed by articles, photos, and opinions in the media was prosecuted and suspended with a fine of 8million won. Moreover, as article 251 of the Public Election Law prohibits slander against candidates, this is making it difficult for citizens to evaluate or criticize them. During that election period, one user was prosecuted and given 10 million won fine in the court of first instances for just calling the presidential candidate “Ddang Baki” as a nickname. In the coming local elections, many postings are widely being deleted, and many users are subject to prosecution.

<Table 6-2> Crackdown of Cyber Election Crime

| | Category | Total | Measures | | | | | | Request to delete |
|--|-------------------------------------|--------|----------|------------|-----------------------|---------|---------|--------------|-------------------|
| | | | Subtotal | Accusation | Investigation request | Warning | Caution | Notification | |
| 18th Election of members to the National | Total | 10,623 | 42 | 3 | 6 | 28 | 2 | 3 | 10,581 |
| | Slander, black and white propaganda | 600 | 9 | 2 | 4 | 1 | - | 2 | 591 |
| | Prior election campaign | 9,475 | 27 | - | 2 | 22 | 2 | 1 | 9,448 |

| | | | | | | | | | |
|---------------------------------------|--|--------|----|---|----|----|---|---|--------|
| Assembl y | Other | 548 | 6 | 1 | - | 5 | - | - | 542 |
| 17th President ial elections | Total | 87,812 | 59 | 7 | 29 | 23 | - | - | 87,753 |
| | Slander, black and white propaganda | 6,752 | 30 | 4 | 24 | 2 | - | - | 6,722 |
| | Prior election campaign | 76,277 | 24 | 2 | 5 | 17 | - | - | 76,253 |
| | Other | 4,783 | 5 | 1 | - | 4 | - | - | 4,778 |

* Source : Korea Communications Standards Commission (KCSC)

** Slander, black and white propaganda in article 251, prior election campaign in article 93(1) of Public Election Law

6-6. Internet Real Name Registration System

Since 2004, the ‘Mandatory Internet Real-Name System’ was introduced, which is based on an individual’s resident registration number. This system is problematic because it violates freedom of expression which comes from anonymity, reduces the people’s participation in politics, and encourages the Internet sites to collect and misuse sensitive private personal information such as resident registration number.

According to the revised [Public Election Laws] of 2004, all online newspaper notice boards only allow registered users with confirmed real names to upload postings during election. If the newspapers do not implement the required technical processes, they must pay a fine.³³ In May 2006, ‘The Sound of the Masses’ (Min-joong Sori) was ordered to pay a fine because they refused to follow the real name system. Also, in December 2007, ‘Real World’ (Cham Sae-sang) refused to adopt the real-name system during the presidential election, received a fine, and is now awaiting trial. This was an important time because aside from the presidential election in December 2007, there was also a nationwide dispute on the ‘Anti-Discrimination Act.’ Among the thirteen original criteria included in the bill such as gender, age, race, and face-color, the law was enacted without the following seven categories; medical history, nation of origin, sexual orientation, education, family, language, and criminal history. However, the sexual minorities were unable to participate in this argument even though they were directly affected by this law, because they had to reveal their sexual orientation according to their ‘real-name’. Also, activities of a student association were significantly restrained

because of the real-name policy. The student association was supposed to evaluate the Education Policies of the Candidates for Presidency in 2007. However, the association was worried about the possible negative effect on the active students because their resident registration number and age would be revealed. This is because the participation in election campaigning is currently forbidden under Public Election Law.

<Table 6-3> Compliance of Real Name Registration System under Public Election Law

| Category | Compliance | Deviation (temporary closure of notice board) | Denial (fine levied) |
|--|------------|---|-------------------------|
| 18th National Assembly Election (2008.4.) | 834 | 452 | 0 |
| 17th Presidential Election (2007.12.) | 880 | 259 | 1 |
| 4th Regional Election (2006.5.) | 483 | 172 | 1 |

*Source : National Election Commission

According to the 2007 revised law on information use on the Internet, portals, the press, and UCC, Internet sites must allow only registered users on the real-name policy to upload postings. If they do not implement the necessary technical processes, they will be fined. Since February 2009, the sites subject to this law will be increased from 37 to 153 and since February 2010, they increase again to 167. The government is currently talking about expanding this number. However, Google Korea announced that it would not follow this ‘Real-Name Policy’ and stopped user settings in ‘Korea.’ After this, many users have become ‘cyber wanderers’ and they are moving from Korean websites, which require identification, to foreign email sites or blogs.

According to the law on Internet websites of 2009, if the user of an Internet domain does not his or her ‘real name’, the Internet webpage administration board is required to eliminate the domain name, or otherwise fined.

6-7. Internet Users traced by the Government Investigative Bodies

Since the ‘Real-Name Registration’ system, Internet businesses have been constantly retaining private information of the users and cooperating with the investigating authorities. The court issued warrant required for access to a user’s private information has become a mere formality. Thus, the private information of users without any kind of criminal accusation is being handed too easily to the authorities and Internet users are constantly being spied on. The perception that the investigating authorities are watching over the average Internet user when they write critical articles about the government scares the people from writing their real opinions.

According to the [Electric Technical Law], when the investigating authorities or information agencies ask for a user’s name, resident registration number, address, or phone number, etc., they must make a written request. However, there is no need to prove a crime or show a court warrant – in urgent cases, the written request can be submitted after the information has been handed over. Every year the number of requests of information from investigating agencies or governmental agencies has increased and last year the number of requests for information related to the Internet totaled 119,280. In October 2008, it became known that the government and the police had been spying on postings which criticized the government; and they had been collecting information about the authors and their IDs.

<Table 6-4> Number of cases where information was given (according to each case)

| | land lines | cell phones | paggers | pc, internet | total |
|------|------------|-------------|---------|--------------|---------|
| 2004 | 46,366 | 191,649 | 20 | 41,894 | 279,929 |
| 2005 | 56,614 | 244,976 | 23 | 41,158 | 342,771 |
| 2006 | 48,462 | 204,071 | 9 | 71,024 | 323,566 |
| 2007 | 57,375 | 275,338 | 4 | 93,691 | 426,408 |
| 2008 | 58,374 | 296,913 | 1 | 119,280 | 474,568 |
| 2009 | 59,913 | 358,375 | 0 | 143,179 | 561,467 |

* Source: Korea Communication Standards Commission (Former Ministry of Information and Communication)

[Internet Privacy Protection Law] requires investigative agencies and government associations to ask for a court’s permission before it requests sensitive information such as the poster’s IP address or Internet log records. However, every year the number of requests of information from investigative agencies or governmental agencies increases and in 2009 the amount of requests about information related to the Internet totaled 57,549 requests.

<Table 6-5> Number of Cases with Reported Use of Communication (according to each case)

| | land lines | cell phones | paggers | pc, internet | Total |
|------|------------|-------------|---------|--------------|---------|
| 2004 | 23,403 | 108,118,930 | 3 | 44,665 | 176,830 |
| 2005 | 21,636 | 87,114 | 10 | 54,793 | 195,369 |
| 2006 | 21,948 | 110,738 | 0 | 41,681 | 150,743 |
| 2007 | 31,337 | 128,166 | 0 | 41,584 | 183,659 |
| 2008 | 37,912 | 296913 | 0 | 46,667 | 212,745 |

*Source : Korea Communication Standards Commission (Former Ministry of Information and Communication)

[Internet Privacy Protection Law] requires investigative authorities to get permission from the court when they want to monitor private material such as Internet emails or private postings. However in reality, the court does not give out the warrants as strictly as they should. In fact, only 3.6 percent of the total number of requests for a warrant was rejected by the court in 2007. In times of emergency, warrant can be received after the situation, and if monitoring doesn’t continue on after 36 hours, then warrant is unnecessary. Thus, the number of monitoring by investigating authorities increases every year. The problem is dire because most of the

monitoring is conducted by National Intelligence Service (NIS) that doesn't even have the right to normal criminal investigation. In 2009, 97.7% (according to phone number) of the government's official monitor statistic cases was conducted by the NIS. Especially, what brought more social shock was by the realization that the NIS executed Internet Deep Packet Inspection which not only included individual emails and postings but the whole internet line.

<Table 6-6> Number of Monitoring (according to each case)

| | land lines | cell phones | paggers | pc, internet | Total |
|------|------------|-------------|---------|--------------|-------|
| 2004 | 887 | 265 | 0 | 461 | 1,613 |
| 2005 | 621 | 1 | 0 | 355 | 977 |
| 2006 | 577 | 0 | 0 | 456 | 1,033 |
| 2007 | 503 | 0 | 0 | 646 | 1,149 |
| 2008 | 506 | 0 | 0 | 646 | 1,152 |

*Source: Korea Communication Standards Commission (Former Ministry of Information and Communication)

6-8. Recommendations

- Arbitrary administrative deliberation on the internet should be abolished and criminal prosecution needs to be decreased.
- Prosecution for “false information” and “defamation” should be eradicated. What is more is that there should be no restriction to criticism against the government, police or politicians. The temporary measures on public criticism should be put to stop. Even during presidential election period, free expression of criticism should be widely accepted.
- Internet Real Name Registration System should be abolished because it violates the internet user's privacy.

- The court's ruling on the provision on communication information and reported use of communication to trace and monitor internet users and monitoring should become more strict and Internet Deep Packet Inspection should be stopped.

6-9. [Appendix] Case of the Korea Press Consumerism Organization

1. Overview

The Korea Press Consumerism Organization (hereafter KPCO) was founded in May and June of 2008 as an internet community website in line with the citizens' boycott of the advertisements on three Korean newspapers in order to report that the view on the U.S beef importation changed to the opposite of that under the former government and to boycott Chosun Ilbo, The JoongAng Ilbo, and The Dong-A Ilbo (hereafter Chojoongdong) for making distorted reports on the candlelight demonstration against the conditions of importation.

The KPCO, which operates on a DaumCafé, an internet forum service provided by Daum(Korean web portal), posted the Ad list of Chojoongdong daily to facilitate the boycott.

As the boycott spread, The Chosun Ilbo and The Dong-A Ilbo made a request to Daum to delete all such postings. The Chosun Ilbo even demanded a closedown of the cafe.

The three newspapers' market share together is over 70%. As media gurus, they used their power of influence to pressure the political and business circles, labeling the citizens' act of free speech and a consumer movement as unlawful and demanding a criminal punishment.

Consequently, all such postings and the related were deleted. 21 administrative staffs of the café were prosecuted and found guilty of committing business interference under criminal law in February 2009. Its appeal case is currently in process. The freedom of speech on internet in Korea was seriously infringed and reduced as a result of the event.

2. Deletion of postings as webmaster's provisional measure

The Chosun Ilbo sent out an official document to major websites requesting a deletion of all such postings. However, the webmasters did not accede to it. Then, from June 20, 2008, The Chosun Ilbo and The Dong-A Ilbo submitted a deletion request for each postings. The postings asked to be deleted were those related to Ad list or the boycott, and those criticizing the distorted reports of The Chosun Ilbo and Dong-A Ilbo.

Thus, Daum webmaster followed the Provisional Deletion for 30 days, and brought the case to Korea Communications Commission. Since then, The Chosun Ilbo and The Dong-A Ilbo closely monitored the KPCO café and requested for deletions on the spot. Five minutes was enough time for a new posting to be deleted.

3. Permanent deletion due to administrative deliberation and advice

On 1st July 2008, out of 80 postings requested for deliberation by Daum, Korea Communications Commission ruled in favor of deletion for 58 posting, stating that they violated its provisions. Also, it advised the internet businesses to delete ‘similar cases’ in its official notification of the deliberation result. The 58 postings were permanently deleted immediately. Many other similar postings both on KPCO café and other internet forums were also permanently deleted.

Not only postings that reported the name, phone number, website address of the advertiser, but also those with a link to websites that had Ad list postings was permanently deleted.

According to media reports, over 600 postings were permanently deleted for being a ‘similar case’ from July 2nd to 7th in 2008 PD Journal(2008.7.9)

4. A request for a closedown and regulation of forum

Unsatisfied with mere deletion requests, The Chosun Ilbo requested a closedown of KPCO café in an official document sent on June 23.

Daum brought the matter to Korea Communications Commission, and it deliberated ‘a cooperation request for a self-purification regarding information on the advertisement boycott against specific newspapers’.

Following such administrative decision, Daum made a request to KPCO café to be mindful of its operation. Wary of a closedown, KPCO café’s activity declined significantly.

5. Criminal punishment of KPCO administrators and authors of Ad list posting

| | | |
|------------|--|--|
| 2008. 6.17 | President Lee | “The internet could become poisonous” |
| 6.18 | Economic 5th Cycle | Prohibition pressure on posting Ad List on portal websites. |
| 6.19 | National Grand Party (Ruling Party) | Party leader, Hong Jun Po, pressuring strong actions against the boycott |

| | | |
|-----------|------------------------------|---|
| 6.20 | Kim Kyung Han, Chief Justice | Special investigation command, conveying official document, commanding strict investigation Immediately announced investigation course and plan according to prosecutor's command. |
| 6.21 | Prosecutor | Massive exclusive investigating team formed of 5 prosecutor, 10 investigator Charge or without charge investigation conducted |
| 7.3 | Prosecutor | 23 Café webmaster forbidden to leave country (including 2 minors and 1 MBC cover writer) |
| 7.3~ | Prosecutor | Charge on Chojungdong Accusing the advertising company and urging appeal |
| 7.15 | Prosecutor | search and seizure on 5 café webmaster's house and office (confiscated computer, storage device, cellphone, call history, and email) |
| 7.18~8.14 | Prosecutor | Start summon investigation. High degree investigation from morning till night, 1~3 times individually for 25 people (public holiday and mid-night investigation, including 1 middle schooler) |
| 8.19 | Prosecutor | Prior arrest warrant for six people 5 café webmaster and google advertising list 'poster') |
| 8.21 | The Court | 2 arrested (café founder, google advertising list provider), 10.21 until bail was judged arrested in Seoul detention center for 61 days |
| 8.29 | Prosecutor | 24 prosecuted (including 1 minor) |

| | | |
|------------|-----------|---|
| 9.17 | The Court | Start of trial of first instances (18 trials, one trial per week) |
| 2009.10 | The Court | Chief justice, Shin Youngchul unfair intervention during candlelight vigil trials |
| 2009. 2.19 | The Court | Justice department of first instances, all 24 found guilty charged 10 months prison with 2 year probation |
| 5.11~12.18 | The Court | 5 court of appeals , Least, 10months prison with 2 year probation. Found guilty. |
| 12.18~ | The Court | 12.18 the accused and the prosecutor both appealed Still pending in the appeals |

* 21 administrative staffs of the café including a high school student and three others including an MBC investigative writer are prosecuted

6. Political oppression of free speech

After President's remark "Internet could be poisonous" about the KPCO's boycott against the advertisement, there was unjust chain of pressure for investigation connecting Chojoongdong-economic circle-ruling party-Ministry of Justice, and the public prosecutors carried out an intense investigation including travel ban, seizure, and arrest warrant request all without an official charge.

Also, according to the judge in the court of first instance, 'two judges who have been criticized by The Chosun Ilbo et al. regarding former cases' were excluded for this case. Excluding the two judges by discretion because they were mentioned in The Chosun Ilbo's article is a clear violation of the defendants' right to have fair trial and a unjust political action that gives The Chosun Ilbo a way to avoid the judges they dislike.

Thus, the conviction of KPCO is a decision made under the prosecutors' unreasonable investigation and the president of court's unlawful interference with the trial and a political oppression of free speech and consumer movement.

7. Serious threat to freedom of speech

The postings made as a part of KPCO's boycott was deleted and the prosecutors carried out an intense investigation, which ended up and a conviction at the court.

Minerva was arrested and prosecuted for posting a critical remark on the government's economic policy. Also, four internet users who wrote most viewed postings on Agora, an internet forum, were charged under business interference for having manipulated the view.

As a result of these series of events, the freedom of speech online in Korea was seriously violated and reduced. The reduction emerged in two ways; 1) the decline in both quantity and quality of internet expressive activity 2) cyber refugees who changed their sphere of activity to foreign websites, such as Google or Yahoo.

People stopped writing one at all, or do a self-censoring when writing. Not only that, many internet users delete their posting made in the past.

In order to enjoy some freedom of speech, the internet users became cyber refugees who no longer uses the services provided by domestic internet business, but moved to that of foreign websites that are free from the influence of Korean government.

People started posting Ad lists on Google. The Ad lists deleted by Daum were not deleted on Google.

Such phenomenon appeared not only on online postings but for private emails. Many citizens changed their email to Google, after seeing the confiscation of all information from email, unrelated to the case, during the course of investigation, All 24 people prosecuted from KPCO changed the email to Google as well.

Regarding such events in Korea, Foreign Policy, a U.S magazine specializing in foreign policy, selected Korea as a country that censors the internet along with four other countries on March 25, 2009. It reported that "Korea is a leading IT country with the over 90% internet subscription, whose governmental regulation on internet is also at the top level."

On 11th March, 2010, AP reported that the Reporters Sans Frontières (RSF) categorized Korea as monitoring country on internet censorship. RSF reasoned that Korea threatened anonymity and had strict regulations triggering self-censorship. This organization lamented that compared to October last year, press freedom index has fallen from 22 to 69.

CHAPTER 7. RIGHT TO INFORMATION

7-1. Overview

Right to know is critical to the realization of freedom of expression. The United Nations General Assembly in 1946 Resolution 59(1) states, “Freedom is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.”¹ In 1991, the Constitutional Court held that the people can form their opinion freely only if they have access to sufficient amount of relevant information. Right to know, which is closely related to the exercise of freedom of expression, includes a right of access, a right to collect, and a right to process the documents held by the government. The government has duty to provide citizens with correct information that is publicly available, to guarantee citizens access to different media sources so as not to isolate them from relevant information, and to resolve digital divide between people. However, in Korea, citizens are becoming increasingly restricted from accessing information as more information is prevented from public viewing and the number of independent media is becoming smaller. Moreover, the debate on Web Contents Accessibility is still an issue today.

7-2. Public Access to Information

In Korea, Act on Disclosure of Information by Public Agencies was enacted in 1996 to prescribe obligations of public institutions to disclose their information and matters concerning people’s claims for the disclosure of information. In 2006, Seoul opened the OPEN system, the Online Procedures Enhancement for Civil Applications. At its beginning, the system was under the direct control of the President, whereas its status has recently been dropped to under the control of Ministry of Public Administration and Security. Moreover, discussion about enactment of Public Information Act, which had been pushed forward by Roh’s administration during its later half years, has now been halted. More importantly, the decreasing percentage of information that is now being disclosed shows the purpose of the legislation and the people’s right to know are being disrupted. During the years from 2005 to 2007, the percentage of information “fully disclosed” by the central government was around 78 ~ 79 %, and “undisclosed” 11%. However, after Lee’s administration launched off in 2008, the percentage of “fully disclosed” information dropped to 68% and “undisclosed” information increased to 16%.

¹<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

<Table 7-1> Annual Report on the Central Government's Disclosure of Information

| Year | Total number of claims | | | | |
|------|------------------------|----------|----------------------|---------------------|--------|
| | | Subtotal | Completely disclosed | Partially disclosed | Closed |
| 2008 | 60,262 | 45,712 | 30,969 | 7,555 | 7,188 |
| | Percentage (%) | (100) | (68) | (16) | (16) |
| 2007 | 80,796 | 72,162 | 56,705 | 7,572 | 7,885 |
| | (%) | (100) | (79) | (10) | (11) |
| 2006 | 57,737 | 52,962 | 41,864 | 5,352 | 5,746 |
| | (%) | (100) | (79) | (10) | (11) |
| 2005 | 47,294 | 43,984 | 34,479 | 4,710 | 4,795 |
| | (%) | (100) | (78) | (11) | (11) |

* Source: The Ministry of Public Administration and Security

The case of the prosecution is even more severe. In 2007, the prosecutors allowed disclosure of only 40% (421 cases out of 1,059 cases) of all the requested information. However, after the launch of the new government in 2008, the percentage dropped by 50% to 22% (618 out of 2,829).

<Table 7-2> Annual Report on the Prosecution's Disclosure of Information

| Year | Total number of claims | Number of Cases Disclosed | Percentage of Cases Disclosed (%) |
|------|------------------------|---------------------------|-----------------------------------|
| 2006 | 661 | 249 | 38 |
| 2007 | 1,059 | 421 | 40 |
| 2008 | 2,829 | 618 | 22 |

* Source : The Supreme Prosecutors' Office

The situation is not much different with the police. In 2006, the percentage of disclosed information was 79.5% (5,357 out of 6,738) and 2007, 26.6% (7,001 out of 9,130). However, in 2008, the figure was 63.8% (11,894 out of 18,625). Such changes of percentages show that information disclosure is being discouraged while secrecy is spreading among the institutions.

<Table 7-3> Annual Report on the Police's Disclosure of Information

| Year | Total number of claims | | | | | Undecided | Others (withdrawal, etc.) |
|------|------------------------|----------|----------------------|---------------------|--------|-----------|------------------------------|
| | | Subtotal | Completely Disclosed | Partially Disclosed | Closed | | |
| 22 | | | | | | | |
| 2006 | 6,738 | 6,409 | 4,341 | 1,016 | 1,052 | 2 | 327 |
| 2007 | 9,130 | 8,551 | 5,656 | 1,345 | 1,550 | 0 | 579 |

| | | | | | | | |
|------|--------|--------|-------|-------|-------|---|-------|
| 2008 | 18,625 | 14,175 | 9,707 | 2,187 | 2,281 | 0 | 4,450 |
|------|--------|--------|-------|-------|-------|---|-------|

* Source: The Korean National Police Agency

In April 2009, the Blue House decided to exclude from the disclosure the Information pertaining to names and occupations of the officers at the office of the President, yet such action violates the government’s responsibility under the Act on Disclosure of Information. The Act states that information that is produced or acquired by public institutions or information pertaining to names and occupations of individuals who have been entrusted or commissioned by the state or local governments should be subject to public disclosure.

In July 2009, the National Archives of Korea imposed 5.4 million won as commission for disclosure of information. This was a decision made concerning the recently disclosed documents which had been left closed from 1945 to 1978. If the commission for disclosing information is too high, the information can be regarded as closed.

In September 2009, Gyeonggi Provincial Police Agency decided not to disclose the record of tear gas usage saying that they “don’t have the record.” However, between May and August, the police had stroke tear gas strong enough to melt Styrofoam against the rally held at Ssangyong factory at Pyungtaek. In fact, the record showed 2041.9l of tear gas used in the document submitted to the National Assembly by the police. This shows that their response to the previous request was false. Meanwhile, there has been concern that the recently proposed bill on Protection and Management of Confidential Information] which is now being discussed at the Congress will impair the people’s right to know. This bill defines the scope of confidential information at public institution in a general and vague manner and excessively expands the power of National Intelligence Service.

7-3. Chilling Effect of Independent Media

Since the advent of new regime, the autonomy of independent media has been under great threat as the government enforced massive target-oriented audit, unilateral replacement of operators, and budget cutting.

In 2009, The Board of Audit and Inspection of Korea(BAI) carried out massive audit of the civil society organizations which has received more than 80,000,000 won (80,000 dollars) a year from the government

during the past 3 years(2006-2008)². And in spite of the fact that BAI had not officially announced the final result yet, conservative newspapers were busy trying to attack progressive civil society organizations with the accusation of embezzlement.³

In addition, the Korean Film Council(KOFIC) suddenly changed the way of selecting the management teams of its public media services. KOFIC had been maintaining the policy to continue the contract with the designated agents from the civil society to run its media center and independent film theater. This is because these new forms of public media services owed much to the initiatives and commitments of the civil society. However, becoming of 2009, KOFIC suddenly decided to introduce “public offering process” without clear explanation to find the management teams of these services for 1 year. And on Jan. 25, 2010, after holding two selection processes, it announced the new operating teams. The result was that MediAct which, according to KOFIC’s own expression, “executed well and has highly performed to manage the Media Center into a superior level” during the past 8 years was beaten by a newly born, conservative civic organization which was formed mere 6 days before the announcement of final selection process. Over the past two months, the press and National Assembly had posed many questions regarding the transparency and fairness of the selection. However, to all these suspicions and questions, KOFIC did not explain much other than saying that the process was fair enough. And to everyone’s objection, it held another public selection process for the cinematheque(“Seoul Art Cinema”) in spite of the fact that it is funding only 30 % of the whole budget of the cinematheque. In this way, KOFIC is causing a great threat to the new public media areas developed by civil society.

Regarding the issue, a great number of film people, media related experts and citizens are expressing their great concerns.⁴ And the organizations who participated in the public offering process for media center and independent film theater filed lawsuits on March 10 to request the cancellation of Kofic’s selection decision.

² The audit started as the National Assembly requested the necessity of management in the governmental subsidies for the civil society after the ‘candlelight political situation’. The objects of the audit include the whole range of organizations which has received support from 3 governmental bodies, which are Ministry of Public Administration and Security, Ministry of Culture, Sports and Tourism(MCST), and the Ministry of Environment. However, it turned out that most of them are from culture and art sector. Among the 543 organizations, about 520 fall into MCST’s category. YonhapNews, “Culture and Art sector, ‘a night before a storm’ for BAI audit”, Oct. 21, 2009
<http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=100&oid=001&aid=0002931515>

³ E-daily, “BAI, exposing the widespread embezzlement of governmental subsidies by culture and art organizations”, Nov. 12, 2009
<http://www.edaily.co.kr/news/NewsRead.edy?SCD=DA33&newsid=02259926589881784&DCD=A00107&OutLnkChk=Y>

7-4. Restricted Public Access

Public access, which is a right that everyone should be able to access and have a room to speak in the media system, had been secured institutional support after the introduction of a new broadcasting law in 1999 in Korea. Since then, viewer-participating programs had been sprawling out throughout various media outlets such as public broadcaster KBS, local terrestrial broadcasters, cable TV and satellite TV, giving a springboard for the people to actively speak out their voices.

However, when the conservative party came into power as of 2008, governmental support for public access sector witnessed drastic cutback. Suddenly, Korean Communication Council withdrew all of its financial support from RTV, the only public access channel in Korea as it became the target of attack by the conservative press and Grand National Party.⁵ (Established in 2002, RTV fills 80% of its programming with the program produced by viewers. In 2008, RTV has broadcast 1400 programs, which is more than half of the

⁴ February 1: A petition with 601 signatories accompanied by statements of support for Mediaact from the International Freedom of Expression eXchange, the Association for Progressive Communications, the World Association of Community Radio Broadcasters, Women's International Network of AMARC, Asia-Pacific Chapter of Global Voices Online, ALIRAN in Malaysia, Hong Kong In-Media, MeidR and Champon in Japan, Community Communication Section of IAMCR(International Association for Media and Communication Research), Media Watch Taiwan, Campaign for Media Reform Taiwan, the Anti-Privatisation Forum of South Africa, Nuestros Medios, Canada, and Community Media Forum Europe are submitted to KOFIC and the Culture Ministry
<http://www.gopetition.com/online/33662.html>

February 18.: 155 independent filmmakers in Korea declare boycott as to the Independent film theater

March 16: A petition endorsed by 1692 filmmakers in Korea is delivered to KOFIC's main office.

March 17: A petition endorsed by 340 people from the arts&culture sector in Korea is delivered to KOFIC's main office.

⁵ KCC cut off their annual funding of one million dollars at least. Skylife also ended its financial support, which was about 400,000 dollars. RTV was a project included in the business plan of Skylife, a commercial broadcasting company that won satellite broadcasting permission on the condition that it offer a TV channel and financial support to RTV. As a result, it is now almost impossible to finance the operation of RTV under these circumstances.

total 2500 public access programs produced in Korea.⁶⁾ Financial support for community radios also stopped when it gained regular broadcasting status in Aug. 2009 after 4 years of pilot project since 2005. (Currently there are 7 community radio broadcasters operating in Korea.) Furthermore, Korean government decided to stop supporting MediAct, a media access center which has long worked as vital role to support public access and citizen's media production. In consequence, citizen's public access activities in broadcasting, in other words, media production activities through civil media channels are greatly shrinking. Korean government's responsible answers are badly needed as to the guarantee of citizen's right to access the media for public purpose.

7-5. Information Gap

Currently, the digital divide is increasing between people due to disability, difference between incomes, gender difference, educational difference, and regional difference. In 2009, the percentage of Internet use among people without disabilities was 77.6% and 52.7% for people with disabilities, 55.7% for people with low income, 36.2% for people living in country sides, 37.6% for seniors. Such divide can later bring information inequality between them. In Korea, the problem of digital divide from disability is becoming an issue today. The provisions for protecting the right of the disabled for accessing media, including the right for interpretation in sign language, right for interpretation of contents on TV screen, and right to have subtitles, are still weak.

In 2007, Anti-Discrimination against and Remedies for Person with Disability Act was established. There were mandates for public institutions to follow Korean Web Contents Accessibility Guidelines but not for guarantee of access of general media for people with disabilities. The digital divide between people with and without disabilities is becoming more severe, and disabled people have filed a complaint to the NHRCK in February 2010.

7-6. Restriction on Web Contents Accessibility

In Korea, use of internet banking requires the internet certificate from the Korea Financial Telecommunications & Clearing Institute (KFTC). The certificate mandates use of a plug-in program called Active X which is designed for Microsoft's Windows and Internet Explorer browser only. For such a reason,

⁶ Kim Young Chul, [Oped] "broadcasting voices of the minorities means lopsidedness?", The Hankyoreh, Jan. 18, 2010
<http://www.hani.co.kr/arti/opinion/column/399656.html>

Korean internet banking system requires the users to access it through Internet Explorer browser under Windows system. Accordingly, Open Web, a Korean web forum filed a lawsuit against and demanded the KTFC support the companies to upgrade their Web sites to meet universal standards. However, the accusation fell short of convincing the court. The court held, “99% of Korean internet users are using the Internet Explorer anyway. Therefore, not supporting the other browsers is not against fair trade” ruling against the plaintiff in September 2009.

7-7. Recommendations

- The amount of information held by public institutions should be maximized while the amount of confidential information of public institutions should be minimized.
- It is also important that the confidential information should be classified as such according to a definite standard.
- Common citizens need to be guaranteed public access to variety of media including independent media, with freedom of production of contents. The neglected social groups including the disabled should have public support to access media. Users of certain internet browser should not be discriminated from using public service.

CHAPTER 8. FREEDOM OF EXPRESSION OF DETAINEES

8-1. Overview: Evaluation on the complete revision of Criminal Administration Act

In 1995 report on the mission to the Republic of Korea, the Special Rapporteur Abid Hussein noted that the general regime for the administration of prisons is in large measure based on a law on prisons promulgated under Japanese occupation in 1923. In the same report, he also encouraged the Government of the Republic of Korea to take the necessary steps to bring its prison regime into accordance with established international principles on the administration of justice so as to protect effectively the right to freedom of opinion and expression of detainees. Although the Administration and Treatment of Correctional Institution Inmates(ATCIIAct) enacted in December 2008 is a complete revision of the Criminal Administration Act(CAAct), the new act still allows for the prison to arbitrarily censor detainees' writings and letters leaving room for inhibiting the right to freedom of expression of detainees.

8-2. Censorship on prison letters and restriction on their mailing

Article 43 of ATCIIAct restricts censorship of prison letters except for cases that allow authorities to censor letters or restrict mailing of them; those cases are when the letter is deemed to 1) interfere with an inmate's reformation or return to society 2) violate the security or order of the facility 3) contain false information on the treatment of detainees or the operation of the facility.

Kim Myung Ho (former professor at Sungkyunkwan University) was in prison after he was sentenced to four years of imprisonment under the Punishment of Violences, ETC. Act. He had filed a constitutional appeal regarding a part of the Criminal Procedure Act and was trying to mail the amendment form in December 2009 when the Constitutional Court instructed him to follow due procedure and employ an attorney. However, the case was dismissed as the prison sent the form 29 hours late after reviewing the document failing it from getting delivered on time. In February 2010, Kim prepared a complaint against the authority responsible for the delay and tried mailing it to Wonju Police Station. The prison again insisted on reviewing the documents saying "all documents related to lawsuits must be reported to the authorities," and then inhibited him from mailing them as the authorities decided the documents "contained false information on the facility."

When human rights organizations protested against the exceptional and discriminating treatment of Kim, the authorities simply ignored them and transferred Kim to a prison in Chunchun. Such treatment is violation of the Article 10, 14, 16, and 19 of the ICCPR and Article 37 of the Standard Minimum Rules for the Treatment of Prisoners enacted in 1975.

Shin Chang Won who is being jailed for life for burglary and murder won a compensation suit when the Supreme Court ruled in favor of him in April 2010 regarding a case filed against the facility for prohibiting him from mailing six letters to two newspaper journalists to request an aid for collecting of evidence for filing a law suit. Despite the Supreme Court's ruling, the Prosecutors stay reluctant to address the problem in the current law which allows for the prison's arbitrary censorship of the letters and restriction on mailing.

8-3. Censorship of Writings

Prisoners may either prepare documents or drawings or write a literature, science and other matters. This is a big development from the CAAAct which requires permission from the authorities before detainees can write letters. However, Article 49 (1) of the ATCIIAct notes exceptions to the case, as it states, "this shall not apply to cases where the warden deems that an evident risk to the security or order of the correctional institution exists." Also, Article 49 (3) writes that the authorities may prohibit mailing of the documents or drawing falling under the category of exceptions mentioned above.

8-4. Not disclosing records related to requests for the disclosure of information

In response to the requests for disclosing information on the Justice Department, the Department disclosed the total number of mails sent and received but not the number of letters censored or prevented from mailing based on the reason, according to the Department, that they do not have the information. According to the same reason, the number of the written materials allowed to be sent outside was disclosed but not those prohibited from being written or getting sent outside.

8-5. Recommendations

- The current act, which still allows the prison to arbitrarily censor detainees' writings and letters leaving room for inhibiting the right to freedom of expression of detainees, needs to be repealed.
- In no case should a detainee required to obtain permission before he is allowed to engage in writing.
- Also, the current act, which allows the prison to arbitrarily censor detainees' writings and restrict its mailing outside, needs to be repealed.
- The Justice Department should make statistic data relating to facts about its censorship and make them public.

CHAPTER 9. FREEDOM OF EXPRESSION BY YOUTHS

9-1. Overview

In 2003, the UN Committee on the Rights of the Child reviewed a report on the Korean government according to the Convention on the Rights of the Child and “express[ed] concern that the freedoms of expression and association are being restricted due to school regulations that strictly control the student council by administrative means and that limit or prohibit extra-curricular political activities in elementary and middle schools.” “It is recommended the authorities guarantee the freedoms of association and expression for youths revising school regulations and guidelines by the Ministry of Education, Science and Technology to promote the active participation of youths in procedures of formulating opinions and political activities both in and out of school.” (CRC/C/15/Add.197)

Despite this recommendation, the Korean government did not take any real action to improve the freedom of expression by youths. As a result, the Korean society of 2010 does not provide for youths to “freely express” or to “convene a peaceful assembly.”

9-2. Violations of the Freedom of Expression by Youths in School Regulations

In Korea, the general rule taboos youths in elementary to high school to express their opinions by means of assembly or demonstration. Also, most regulations of elementary to high schools include provisions that arbitrarily limit the freedoms of expression, assembly, demonstration, and association. In provisions concerning “penalty” in these regulations define those deserving “community service or special education” as students who “created or joined organizations or groups without permission,” “leading or instigating the act of sending in blank examination papers,” “refusing to listen to classes,” “leading, instigating, or participating in joint leave of absence,” “instigating other students for the purpose of disrupting order within the school,” “in possession of and distributing seditious documents.” These regulations prevent students from freely expressing their opinions within school and are not guaranteed independent club activities.

On October 2009, a student of Seoul Broadcasting High School wore a badge opposing national examinations. The badge was confiscated and the student was reprimanded by the teacher. Leaflets and badges opposing national exams were found in his bag and also confiscated. Also in 2007, Pyeongchon High School of Anyang, Gyeonggi Province held a disciplinary committee session concerning the “illegal distribution of printouts” by a student.

(*Reference material - the regulations of elementary to high schools such as Okdong Middle School, Pyeongchon High School, and Kyongsu Middle School, in various regions of the nation)

(*Reference material - “Violation of Human Rights due to National Examinations” group appeal by the National Human Rights Commission of Korea, 2009-12-17)

In elementary to high schools, rallies by youths are prohibited by school regulations and forcibly disbanded and punished by the teachers. Also in society, there exists an overwhelming negative impression of the youths’ freedom of assembly, freedom to protest, and freedom of association. A representative example is that of Okdong Middle School on May 10, 2007 when a group of students tried to organize a lunchtime rally within the school to demand liberalization of the hair code, prohibition of punishments, and other protection of human rights. The rally was disbanded and the students that participated in the rally were punished. On March 2010, Jeonggak Middle School of Incheon also tried to organize a rally to demand liberalization of the hair during out of school hours, abolition of the penalty point system, and other protection of human rights, but was too disbanded by the teachers.

(*Relevant article : “A cry ‘we want to live like humans’ by middle schools students who were disbanded without being able to speak” Ohmynews, 2010-03-17)

9-3. Violation of the Freedoms of Assembly and Association of the Youths Who Participated in the 2008 Candlelight Protests

When the candlelight protests occurred nationwide during May 2008, many youths participated. However, the Seoul Metropolitan Office of Education sent 900 vice-principles and vice-commissioners to the scene of the protests, and prevented students from participating. The Gyonggi Province Hwaseong Osan Office of Education sent an official document to the schools ordering the schools to “prevent the students from participating in the candlelight protests and figure out the personal data of those students who participated.” Several middle and high schools announced that youths participating in the candlelight protests would face consequences, through letters sent home and in broadcasts within the school, effectively limiting the youths’ freedom of assembly.

Also during the same period, a high school student in Jeonju City, Jeonbuk Province filed a registration for assembly with the police. However, the police paid a visit the student’s school, informed the teachers of the student’s intent, and prevented the student from participating. The police had exerted pressure on the student through the teachers. This is a clear violation of youths’ freedom of assembly.

(*Relevant articles: “Hwasong Osan Office of Education Issues an Apology in Arousing Public Criticism by the Official Document Which Implied an Investigation into Students” Newsis, 2008-05-20

“Limiting Students’ Participation in Candlelight Protests is a Violation of Human Rights” Segye Times, 2008-05-19

“ ‘From the Candlelight Protests to the Black List...’ An Appeal by the Human Rights Commission of Youths
“ Kyunghyang Daily News, 2008-05-22)

In 2008, Ilsun High School of Seoul issued a warning saying that “participation in the candlelight protests will result in expulsion.” In the case of In-sik Kim of Songgok High School, he was disqualified as a candidate to the student council president, because he had previously participated in candlelight protests. Furthermore, during the forcible dispersal of the candlelight protests on June 2008, the police hauled four youths to the station and coerced them to write letters of apology in return for releasing the students with a warning. On August 2008, the police even imprisoned a youth under charges of violating the Assembly and Demonstration Act, damaging public property, and obstructing the general traffic.

The Assembly and Demonstration Act does not explicitly restrict the youths’ freedom to assembly. However, through the above cases, we can see that society does not look kindly upon the youths’ freedom of assembly, freedom to protest, and freedom of association. Recently, the Gyeonggi Provincial Office of Education created an ordinance for the human rights of students which stated that elementary to high school students have the freedom to participate in peaceful rallies within the school. This statement became controversial, and eventually eliminated from the ordinance. Also, the Ministry of Education, Science and Technology, Office of Education, and the police arbitrarily violate the youths’ freedom of assembly.

9-4. Recommendations

- The Korean government must protect the freedom of expression both inside and outside of school by revising the regulations that violate the youths’ freedom of expression, of elementary to high schools.
- The Korean government must recognize youths as “bearers of rights.” Also in order to eliminate prejudice that is obstructing the civil and political rights of youths, it should provide adequate human rights education to teachers, educational bureaucrats, police, and public officials, and constantly organize society-wide campaigns.
- The Korean government should provide an institutional system through legislation and ordinance in order to improve the civil and political rights of students in general.

CHAPTER 10. FREEDOM OF EXPRESSION FOR THE DISABLED

10-1. Overview

It has been three years since the Disabled Discrimination Act took its effect. The government is expected to take appropriate measures for the disabled to get information and ideas through all methods of expression on their own decision. However, their accessibility of media and information has not been better off given that it is not fully realized in the relevant law such as the Broadcasting Act and Promotion of the Motion Pictures and Video Products Act. In that sense, the Broadcasting Act and Promotion of the Motion Pictures and Video Products Act should be amended with appropriate policies implemented sooner rather than later.

10-2. The Disabled Protesting More Access to the Media

On February 9, 2010, the Disability Discrimination Act of Solidarity in Korea requested that the discriminatory status of 30 disabled people in the media be improved, to the National Human Rights Commission of Korea. The current law does not provide strong grounds for the disabled to access and participate in the media, resulting in such discrimination of the disabled. In order to improve this situation, the Broadcasting Act and Promotion of the Motion Pictures and Video Products Act must be revised and policies must be created to enforce this revision.

10-3. The Internet Gap for the Disabled

The percentage of the disabled who use the internet is 52.7, which is 24.9 percent lower than the corresponding percentage of the average citizen which is 77.6. Also, the percentage of the disabled who use the wireless internet is 7.5, which is approximately only one out of 3.6 compared to the corresponding percentage of the average citizen which is 26.3 (2009 Research on the Information Gap Situation of the Disabled, Ministry of Public Administration and Security). However, the Anti-Discrimination against and Remedies for Person with Disability Act was passed in 2007 and it states that in designing and managing a website, people must adhere to the Korean Web Contents Accessibility Guideline. This would gradually improve the problem of Internet accessibility for the disabled. Also, the government is enforcing policies such as the “Five-year Plan to Improve the Policies Regarding the Disabled” and the “Five-year Plan of Information and the Disabled,” which is expected to close the internet gap for the disabled.

10-4. Media Accessibility

Digitalization is currently under way in media industries in general, other than the Internet industry, through efforts such as the digitalization of film. Also, in the field of broadcasting, the Lee Myong-bak administration is promoting the merge of the broadcasting and communication fields. Despite these efforts, the disabled can access the media and enjoy the freedom of expression through participation, only in the public media and not the private media, which still remains closed to them. Therefore, in the future, improvements in the digital gap for the disabled should not only be limited to the Internet, but should spread to the general media.

<Table 10-1> Current Status of the Disabled's Access to Terrestrial Broadcasts

| | KBS1 | KBS2 | MBC | SBS | EBS |
|---|--------|--------|--------|--------|--------|
| Total Hours of Broadcast per Month | 36,000 | 35,920 | 35,395 | 36,375 | 34,457 |
| Hours of Broadcast with Subtitles | 32,275 | 35,920 | 32,875 | 32,760 | 27,735 |
| Percentage(%) | 89.7 | 100 | 92.9 | 90.1 | 80.5 |
| Hours of Broadcast with Screen Commentary | 2,380 | 2,190 | 2,030 | 2,275 | 880 |
| Percentage(%) | 6.6 | 6.1 | 5.7 | 6.2 | 2.6 |
| Hours of Broadcast with Sign Language | 2,820 | 620 | 1,255 | 1,340 | 0 |
| Percentage(%) | 7.8 | 1.7 | 3.5 | 3.7 | 0 |

*Source: Korea Communications Commission, 2008

With this goal in mind, new services must be implemented such as Korean Sign Language Interpretation, Description Video Service, and Closed Caption. However, out of the many domestic broadcasting companies, the companies which provide such service are limited to ground wave broadcasting which is mostly

dominated by public companies. Only a few private broadcasting companies offer these services. Also, among the 429 movies which were screened to the general public in 2009 (140 domestic and 289 foreign movies), only 15 movies screened at 18 screens offered Open Caption.

**<Table 10-2> Current Status of Broadcast for the Disabled Service of Each Broadcasting Station
2007~2009**

| | | 2007 | 2008 | 2009 |
|----------------------------------|-----------------------------|-------------------------------|-------------------------------|--------------------------------|
| Broadcasts with Subtitles | Main Terrestrial Broadcasts | KBS1TV, KBS2TV, MBC, SBS, EBS | KBS1TV, KBS2TV, MBC, SBS, EBS | KBS1TV, KBS2TV, MBC, SBS, EBS |
| | Local Broadcasting Systems | OBS | OBS | OBS |
| | Cable Broadcasts | | | PP(YTN, Welfare TV, Silver TV) |
| Broadcast with Screen Commentary | Main Terrestrial Broadcasts | KBS1TV, KBS2TV, MBC, SBS | KBS1TV, KBS2TV, MBC, SBS, EBS | KBS1TV, KBS2TV, MBC, SBS, EBS |
| | Local Broadcasting Systems | | | |
| | Cable Broadcasts | Welfare TV | Welfare TV | Welfare TV |
| Broadcast with Sign Language | Main Terrestrial Broadcasts | KBS1TV, KBS2TV, MBC, SBS, EBS | KBS1TV, KBS2TV, MBC, SBS | KBS1TV, KBS2TV, MBC, SBS, EBS |

| | | | | |
|--|----------------------------|--|---|--|
| | Local Broadcasting Systems | KBS(Busan, Daegu, Chongju), MBC(Busan, Daejeon, Jeonju, Samcheok), Commercial Broadcasts(Busan, Gwangju, Daejeon, Ulsan, Jeonju, Chongju, Gangwon) | KBS(Busan, Daegu, Changwon, Chongju), MBC(Busan, Daegu, Daejeon, Jeonju, Ulsan, Samcheok, Gangneung, Wonju), Commercial Broadcasts(Busan, Daegu, Gwangju, Daejeon, Ulsan, Jeonju, Chongju, Jeju, Gangwon) | KBS(Busan, Daegu, Changwon, Chongju, Daejeon, Jeonju), MBC(Busan, Daegu, Daejeon, Ulsan, Samcheok, Gangneung, Wonju, Jeju, Chongju, Jinju), Commercial Broadcasts(Busan, Daegu, Gwangju, Daejeon, Ulsan, Jeonju, Cheongju, Jeju, Gangwon, Incheon) |
| | Cable Broadcasts | Welfare TV, Infant Care TV | Welfare TV | PP(Welfare TV, Infant Care TV, Silver TV, YTN), SO(HCN, Nara TV) |

*Source: Korea Communications Commission

<Table 10-3> 2009 Release and Screening of Movies within Korea

| | | No. of Movies | No. of National Viewers | Percentage of National Viewers | Percentage Increase from Last Year |
|---------|----------|---------------|-------------------------|--------------------------------|------------------------------------|
| Korean | Screened | 140 | 75,551,520 | 48.8% | 21.7% |
| | Released | 118 | 68,367,797 | 47.1% | 11.5% |
| Foreign | Screened | 289 | 79,355,564 | 51.2% | -7.0% |
| | Released | 243 | 76,804,241 | 52.9% | -7.7% |
| Total | Screened | 429 | 154,907,084 | 100.0% | 5.1% |
| | Released | 361 | 145,172,038 | 100.0% | 0.4% |

*Source: Korean Film Council

<Table 10-4> Theaters that Provide Screening Services for the Disabled through Government Support

| Year | No. of Movies | Number of and Names of Theaters |
|------|---------------|--|
| 2005 | 10 | 2 (Seoul: CGV Yongsan, Samsung Megabox) |
| 2006 | 10 | 6 (CGV: Seoul Guro, Daejeon, Busan / Lotte Cinema: Ilsan, Daegu, Gumi) |
| 2007 | 15 | 9 (CGV: Seoul Guro, Daejeon, Busan / Lotte Cinema: Ilsan, Daegu, Gumi) / Primus Cinema: Chuncheon, Jeonju, Suncheon) |
| 2008 | 13 | 13 (CGV: Seoul Guro, Daejeon, Busan, Jeju, Suwon / Lotte Cinema: Ilsan, Daegu, Gumi, Ulsan / Primus Cinema: Chuncheon, Jeonju, Suncheon, Chongju) |
| 2009 | 15 | 18 (CGV: Seoul Guro, Daejeon, Busan, Jeju, Suwon, Masan / Lotte Cinema: Ilsan, Daegu, Gumi, Ulsan, Seoul Konkuk University, Incheon / Primus Cinema: Chuncheon, Jeonju, Suncheon, Chongju, Gangneung / Cinus: Cheonan) |

*Source: Korea Association of the Deaf, 2009

10-5. Recommendations

- In Article 69(8) of the Broadcasting Act, the provision that mentions changing the broadcasts more viewer-friendly for the disabled must be revised to an obligatory provision. Also, specific policies and guidelines must be created to support the disabled viewers so that private broadcasting companies can be regulated instantly or gradually.
- The Promotion of the Motion Pictures and Video Products Act must be revised so that the disabled can be guaranteed the right to view movies anytime, anywhere they wish.

CHAPTER 11. A REPORT ON THE SITUATION FACING SEXUAL MINORITIES IN SOUTH KOREA

11-1. Overview

Since the inauguration of the current administration in February 2008, the freedom of expression of and regarding sexual minorities has been greatly curtailed and the overall human rights of sexual minorities have regressed alarmingly in South Korean society.

A fervent Presbyterian elder who caused a public uproar in May 2004 by openly dedicating Seoul, the capital of the multi-religious yet secular republic, to the Christian God during his mayorship, President Myung-bak Lee stated during the primary election campaign for the nomination of his party's presidential candidate, "The normal things for humans is for a man and a woman to form a union and live together. That's why I'm against homosexuality" (daily Chosun Ilbo, May 12, 2007).

The Korea Media Rating Board (KMRB), which rates all cinemas, videos, stage performances, and advertisements, both domestic and foreign, gave the rating of "teenager restricted," in pre-release reviews, to a queer film, in whose production a non-profit sexual minority rights NGO had participated, for its supposed "obscenity" and "risk of imitation," thus discriminatorily restricting the release of the work itself.

Article 92 of the South Korean Military Criminal Act, which is a de facto anti-gay law and the Constitutional Court of Korea's (CCK) legal judgment on whose unconstitutionality is still pending, has actually been revised for the worse to strengthen the punishment inflicted on consensual same-sex acts between soldiers despite controversies surrounding its very constitutionality.

The South Korean government stated in its August 2009 reply to a list of issues regarding its third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which it had submitted in February 2008 to the United Nations (UN) Committee on Economic, Social, and Cultural Rights (CESCR), that it was "carefully proceeding" with the legislation of the Anti-Discrimination Act. However, it in fact has not taken any measure whatsoever to legislate this law, which would be capable of practically regulating discrimination against sexual minorities.

11-2. Strengthened government restrictions on expressions/representations of homosexuality

In November 2009, the KMRB gave Just Friends, a queer film jointly produced by Korean Gay Men's Human Rights Group Chingusai and movie producer Generation Blue Films, a rating of "teenager restricted."

The movie centers on a pair of gay male lovers in their early 20's. Although one of them is conscripted and therefore must be separated for some 2 years except for occasional and short leaves, the young men manage to maintain their relationship and even go on proudly to ask for one of their mothers, who incidentally discovers the truth about their relationship, for sympathetic understanding of their sexual orientation and mutual love. Actively produced by a non-profit NGO, of which the director-cum-producer is a member, this work has been planned from the beginning mainly to raise the pride of sexual minority youths and also to help non-sexual minority youths to understand sexual diversity.

However, although it includes no sexual expression/representation whatsoever, the preview for this movie was deemed "harmful," thus being restricted even at the stage merely of showing the trailer. Likewise, in the two pre-release reviews of the film proper, the KMRB gave a rating of "teenager restricted." The two reasons were a high "risk of imitation" and strong "obscenity."

However, the level of sexual expression/representation in this movie is by no means high, consisting only of the two main characters being caught by one of their mothers in the act of undressing (but leaving the underwear on) and caressing each other. Moreover, there is no use whatsoever of coarse language or profanity in the work. The rating therefore contradicts precedents in which other, "heterosexual," movies with strong sexual expressions and/or violence (e. g., the recent *The Sword with No Name* (2009)) have received the rating of "15-year+."

Clearly revealing the intention harshly to restrict expressions/representations of homosexuality, this strongly betrays the prejudice that homosexuality in itself constitutes "obscenity" and harbors a "risk of imitation." Consequently due to self-censorship expressions/representations of homosexuality have been extremely reduced in their expressive methods and contents alike, and the freedom of art has been seriously violated.

11-3. Strengthened government restrictions on homosexuality in the military

The original Article 92 of the South Korean Military Criminal Act categorically punished with imprisonment all sexual acts between soldiers, even those based on mutual consent. Legislated in 1962, this law stipulated a penalty of imprisonment for 1 year or less for such cases. Due to this article, even a pair of male soldiers who, based on mutual consent, had engaged in sexual acts at home while on leave was judged guilty and punished.

In August 2008, none other than a military court judged that this article in the Military Criminal Act lacked the legitimacy to inflict punishments, meted out disproportionately harsh punishments, and, in violating soldiers' freedom of privacy and right to sexual self-determination, was highly unconstitutional. Consequently, using its official authority, this court requested the CCK for a legal judgment on the unconstitutionality of the article in question, which is still pending.

In November 2009, however, the Grand National Party (GNP), the conservative ruling party, and the Ministry of National Defense (MND) led the revision of this article and increased its maximum legal penalty from 1 year to 2 years without even a single incidence of press and/or media coverage. In addition, while the revised Military Criminal Act prohibits investigations of and punishments for rape and sexual assaults without the victims' accusations, it stipulates immediate investigations in cases of sexual contacts between members of the same sex based on mutual consent. Moreover, because the article does not even stipulate a financial penalty, same-sex acts between soldiers have become crimes with a high legal penalty, and, at present, military investigation authorities categorically detain and investigate the parties involved.

Although the National Human Rights Commission of Korea (NHRCK) and diverse non-profit human rights NGO's have continuously urged the abolition of this act, which is a de facto anti-gay law, and even a military court has judged it to be unconstitutional, the legislature and the government have thus revealed their will to punish homosexuality in the military even more harshly than before.

At present, in the South Korean military, a personality test (Korean Military Personality Inventory (KMPI)) is implemented to sort out homosexuals, and, when revealed to be homosexual, soldiers are subjected to collective bullying, assaults, and sexual violence. Such incidences of human rights violations continue to be reported to the Network for Reporting the Violation of the Human Rights of Sexual Minorities in Relation to the Military, which non-profit gay rights NGO's established in March 2008 to address this pressing and ongoing issue.

Because the Military Criminal Act thus punishes homosexual acts even more harshly than before, prejudice against and restrictions on homosexuals have been strengthened, and homosexual soldiers have suffered from mental, emotional, and physical difficulties including extreme fear of intimidation, anxiety, depression, and even suicide attempts.

11-4. The South Korean Government's Indifference to the Legislation of the Anti-Discrimination Act

In October 2007, the South Korean government announced the forthcoming legislation of the Anti-Discrimination Bill. Originally, this bill included express prohibition of discrimination based on an individual's sexual orientation. The final version of the bill that the government submitted to the National Assembly, the South Korean legislature, later that month, however, deleted seven categories of personal attributes open to (and therefore to be protected from) discrimination including sexual orientation, family type and status, educational status, medical history, national origin, and criminal or detention record, thus arousing severe criticism from non-profit human rights NGO's, women's rights organizations, and legal circles. In the

end, the bill was discarded due to the expiration of the National Assembly's session, without even a proper discussion.

Because the existing National Human Rights Commission of Korea Act (NHRCKA) is merely an organizational law concerning the structure of the national human rights institution, a substantial law that can practically prohibit discrimination has been desperately needed for a long time. However, the incumbent administration has exhibited nothing but extreme indifference to the legislation of the Anti-Discrimination Act.

In particular, the South Korean government stated in its third periodic report to the UN CESCR in 2009 that it was reviewing whether or not to legislate the Anti-Discrimination Act itself, thus revealing its weak will to legislate the bill, and argued, without mentioning any specific review process, schedule, or content, that it was reviewing cases of similar legislations abroad, with certain government ministries and organizations and organizer, was in fact being discussed and closed doors or not at all. In addition, the South Korean government consistently claimed that its reduction of the number of categories of personal attributes to be prohibited discrimination was legitimate, thus approaching the discrimination and the inclusion discriminatorily and spirit of the Anti-Discrimination Act. Such an attitude toward human rights ultimately betrays the government's ignorance of and indifference to human rights, and these are the biggest reasons for the overall regression of human rights in South Korean society since the instate of the current administration.

11-5. Recommendations

- The South Korean government must prepare plans to prevent the recurrence of discriminatory media ratings in relation to expressions/representations of homosexuality and take practical measures that can guarantee the freedom of expression of and regarding sexual minorities and the freedom of art in general.
- In particular, as the UN CESCR has recommended, it must promptly legislate the Anti-Discrimination Act.
- In addition, it must abolish the article 92 in the Military Criminal Act that has violated the freedom of privacy and the right to sexual self-determination by punishing homosexual acts between soldiers.

CHAPTER 12. FREEDOM OF EXPRESSION AND THE ROLE OF THE NHRCK

12-1. Overview

As a part of its functions, the National Human Rights Commission of Korea (NHRCK) has a duty to actively offer the government suggestions for protecting freedom of people who criticize or oppose the government's policies and to investigate cases relating to violation of freedom of expression which may have occurred in the process of implementing policies. Despite its important functions, the President Lee administration cut staff of the NHRCK by 21 percent and appointed Hyun Byung Chul as the Commission's chairman despite his lack of experience or knowledge in the field of human rights.. Accordingly, in 2009, a United Nations Committee on Economic, Social and Cultural Rights (CESCR) and International Coordinating Committee of National Human Rights Institutions (ICC) and expressed their concerns about possible erosion of the NHRCK independent status and recommended the Korean government to respect independence of the NHRCK and ensure adequate support for effective functioning of the Commission. However, to our great disappointment, the current leadership of the Commission seems to have neither political will nor competence to uphold the principle of independence and effectiveness in addressing human rights issues, specially politically sensitive issues such as freedom of expression, assembly and association.

The Commission's reluctance towards investigating or expressing its opinion on previous instances of freedom of expression violations or on certain government policies shows its independent status has been eroded to some extent.

12-2. Position held by Hyun Byung Chul, the Chairman, and Kim Ok Shin, Secretary General of the NHRCK towards the existence of National Security Law

Hyun Byung Chul, the head of the NHRCK has made remarks in favor of the continuing existence of 'National Security Law' for which UN human rights bodies had called for repeal. Kim Ok Sin, Secretary General, is known for a decision he took when he was a judge convicting people under the National Security Act. Moreover, new Commissioners were appointed among those who are politically close to the current government's leadership rather than those renowned for human rights expertise and commitment which damage the Commission's image and reputation.

12-3. The NHRCKs decision not to present opinion to the court regarding the defamation charges against “The Producer’s Notebook.”

In 2008, prosecutors indicted five staff members of MBC “The Producer’s Notebook,” the current affairs TV program for broadcasting distorted facts in an investigative report on ‘the risk of Mad Cow disease associated with American beef.’ To bring criminal charges against media for criticizing the government’s policies as defamation of the related authorities is believed to impair the right to freedom of and critical function of media.

Despite much efforts by some Commissioners and Secretariat that had prepared an investigation report on the case, the Plenary Committee of the NHRCK decided not to present its opinion to the as it failed to get a majority vote. A half of the commissioners were not in favor of presenting its opinion for the reasons stated below; “in a situation where two parties oppose, it is unwise to voice out the Committee’s opinion as it can be seen as taking one side over another, thereby affecting the neutrality and impartiality of the judiciary process.” Byung-chul Hyun, Chair of the NHRCK cast a vote , the chairman of the NHRCK abstained leading to turn down of the presentation of the opinion to the court. In January 2009 soon after the NHRCK’s decision, the court (Judge: Mun Sung Gwan Seoul Central Court) decided that the five staff members of the “Producer’s Notebook” were not found guilty.

12-4. Decision not to present opinion to the Constitutional Court regarding the restriction of Nighttime Demonstration

The candlelight vigil has become the main form of protests in Korea since 2002. However, in 2008, the government brought criminal charges against an extensive number of protestors for participating in a protest during the time banned for rallies. In September 2009, the Constitutional Court ruled that the current law banning nighttime rallies violated the spirit of the Constitution. Similarly, in March 2010, the NHRCK was planning to present its opinion on the Article 10 of the Assembly and Demonstration Act which prohibits public assemblies and demonstrations during time after sunset and before sunrise. It was the NHRCK’s opinion that the article 10, using a time standard that is unclear and subject to change, unduly restricts citizens’ freedom of speech and assembly guaranteed by the South Korean Constitution. However, the new chairman and committee member opposed to the presentation stating “we don’t wish to affect the independence of the Constitutional Court by stating our opinion on the matter,” and “nighttime protests carry the risk of turning violent.” As stipulated in the article 28(1) of the National Human Rights Commission Act, such an action is part of the NHRCK’s mandate, and such a decision is clearly a sign of either lack of political will or ignorance of its own mandate. Also, the research work on nighttime protests done by the NHRCK reveals that there is little reason to call nighttime protests as inherently violent.

12-5. Recommendations

- The NHRCK should uphold international human rights standards when addressing the issues relating freedom of expression in relation to the court and executive body The NHRCK should actively refer recommendations of UN human rights bodies to the legislative, executive, and judiciary branches of the government on national security law, public assemblies and demonstrations, defamation charges, etc.
- Korean government and national assembly should make adequate necessary measures to ensure that commissioner is appointed among human rights experts who are committed to human rights movement with high moral standards and integrity.