

UNITED NATIONS STANDARDS AND THE SITUATION OF KOREAN CORRECTIONS ~ REALITY AND EFFECTIVE COUNTERMEASURES FOR THEM

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I. INTRODUCTION

The Penal Administration Law was enacted in 1950. According to the law, its purpose is “to segregate prisoners under sentence, to correct and educate them, to cultivate a sound national thought and work ethic and to enhance technical education, so that they may be brought back into society as sound citizens”. Korea has been making great efforts to develop a correctional administration suitable to accomplish its objectives. Nevertheless, the challenge Korea faces is more serious than we expected.

In the global view, domestic crimes start to be beyond the control of each jurisdiction, and international crime cases also increase without appropriate countermeasures by the international society. These crimes, are one of the main factors that interrupt everlasting development, distort the effect of economic growth and harm the quality of life. In addition, crime is a serious threat to democracy, free trade and moreover to security, welfare and the dignity of human beings. For these reasons, crime prevention and criminal justice have been one of critical concerns of the United Nations.

After the 2nd World War, with recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family, the United Nations adopted the Universal Declaration of Human Rights in 1948. Following this movement, the Standard Minimum Rules for the Treatment of Prisoners was acknowledged and adopted at the 1st United Nations Congress on Crime Prevention and Criminal Justice in 1955.

The increasing number of criminals, however, brought overcrowding in prison and caused a high level of recidivism, which consequently put the aim of corrections, the rehabilitation of inmates, to shame.

Based upon the realization of the effectiveness of the community for treatment, as a response to the increasing number of inmates in each country and as a result of the 8th United Nations General Assembly, the Tokyo Declaration was born in 1990. Its purpose to devise countermeasures against an increasing number of inmates and to facilitate inmates’ rehabilitation.

In this paper, the United Nations Standards for inmates’ treatment, the reality and issues of the Korean Correction system, and countermeasures against rising problems will be examined.

II. THE PENAL ADMINISTRATION ACT AND CRIME FIGURES IN KOREA

As a central organization of Korean corrections, the Correction Bureau of the Ministry of Justice performs its duty under the guidance of the Director General. Under the Director General, there is a Deputy Director General and six divisions. These are the Correction Division, First Security Division, Second Security Division, Prison Industry Division, Educational Reformation Division and Management Division.

Rapid economic development in the 1970’s in Korea accompanied social transformation with a sharp increase in crimes. In the 1980’s, the focus of criminal justice changed from punishment or deterrence to rehabilitation under the influence of the social trend of the time: pursuing democracy. Accordingly, corrections also started to adopt this ideology.

Furthermore, the resolution recommending the establishment of a human rights organization in each country was adopted by the United Nations General Assembly in 1993 and the guideline for it was made in 1995. Following these recommendations and the guideline, the National Human Rights Commission Act of Korea was enacted in 2001.

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Based upon the law, the National Human Rights Commission of Korea was established as an independent governmental organization and the authority of the commission is as follows.

- Recommendations to improve or rectify human rights concerned statutes, legal systems, policies and practices
- General investigation regarding human rights
- Visit and investigation of detention or protective facilities
- Education - the Commission and government-sponsored institutions can jointly conduct research on human rights.

The commission is composed of 10 members of the committee including a president, senior commissioners, secretary general, etc.

The purpose of the National Human Rights Commission Act is firstly, to supplement the human rights protection system of the government and justice department, secondly, to relieve any human rights breach as swiftly as possible, thirdly, to protect and promote inalienable rights of human beings and fourthly, to realize the dignity and value of human beings and lastly, to contribute to the establishment of democratic order in society.

The present situation of Korea is considered as a transition period because the awareness of human rights came to the forefront after the end of years of military government. The correctional administration had no other choice but to get involved in this movement. So, some side effects such as litigation, maintaining that the current system and regulations violate human rights, are being raised in large numbers. This increase in litigation somewhat hinders our duty of compliance and causes a lot of trouble.

The Penal Administration Act of 1953 was amended 7 times up until 1999 in response to social changes and the introduction of new correctional policies.

The latest amendment focuses on ensuring security and order, facilitating a harmonious atmosphere of correction where order and inmates' human rights can co-exist. It also focuses on revising relevant regulations to encourage inmates' successful return to society, and on creating legal grounds to contract out correctional services to relieve overcrowding and to maximize the effectiveness of correctional programmes.

Major parts of the amendment are as follows.

1. Stipulation of inmates' human rights (Referring to Article 6-1, United Nations Standard Minimum Rules for the Treatment of Prisoners)
2. Establishment of legal grounds for the introduction of private prisons
3. Stipulation of a petition system for making requests or complaints without any obstacles that is fair to everyone (Referring to Article 36, United Nations Standard Minimum Rules for the Treatment of Prisoners)
4. Notification of prison life guidelines for inmates who are newly admitted.
5. Strict guidelines on the use of restraints (Referring to Article 33, United Nations Standard Minimum Rules for the Treatment of Prisoners)
6. Easing restrictions on visit supervision and letter inspection
7. Permitting inmates to use the telephone
8. Establishment of legal grounds for inmates' to study and have vocational training in the community
9. Specifying the inmate's right to write letters and the limitations on that right
10. Moderation of furlough conditions and introduction of a special furlough
11. Specifying disciplinary punishment conditions and embodiment of countermeasures against overuse of disciplinary punishment (Referring to Article 29, United Nations Standard Minimum Rules for the Treatment of Prisoners)
12. Invitation of community members to the disciplinary punishment committee to ensure fairness
13. Introduction of suspension in the practice of disciplinary punishment

For greater clarification the statistics of December 31, 2002 will help explain the general crime figures of Korea in depth.

Table 1: Inmates by Gender at the End of 2002

(Unit: Person)

	Convicted	Unconvicted	Total
Male	36,145	19,139	55,284
Female	1,501	1,779	3,280
Rate of female inmates	4.2%	9.3%	5.9%
Total	37,646	20,918	58,564

Table 2: Inmates by Gender at the End of 2003

(Unit: Person)

	Convicted	Unconvicted	Total
Male	36,646	19,241	53,887
Female	1,702	1,949	3,651
Rate of female inmates	4.9%	10%	6.8%
Total	36,348	21,190	57,538

Table 3: Convicted Inmates by Age at the End of 2002

(Unit: Person)

Age	Total	Under 16	16~ under 18	18~ under 20	20~ under 25	25~ under 30	30~ under 40	40~ under 50	50~ under 60	Over 60
Number	37,646	3	70	541	5,568	5,971	12,217	9,416	2,982	878

Table 4: Inmates by Crime Type at the End of 2002

(Unit: Person)

Type	Theft	Assault	Fraud & Embezzle- ment	Criminal Negligence	Robbery	Murder	Violence	Other
Total	6,444	829	4,097	1,627	5,715	3,686	3,277	11,971

Additionally, from August 1, 2003, the Correction Bureau, Ministry of Justice of Korea ordered the local correctional institutions to release accused persons in custody immediately at the court when the court had determined him/her to be innocent or they received a suspension verdict or a penalty. Previously the accused was released when they got back to the detention centre.

From 2003, one-day health leave per month has been permitted for all female inmates. On average 357 female inmates are granted a day-off monthly under this policy.

Prison modernization and health service reformation is being carried out as a trial to facilitate rehabilitation and reduce recidivism with a long term and short term view. There are also lots of opportunities for education and vocational training.

As a reference, recommendations from international organizations of the UN about criminal justice are as follows.

1. Guarantee of lawyer participation in investigation
2. Guarantee of swift counselling with judge on arrest or detention
3. Reduction of detention periods in the police station
4. Prohibition of torture and establishment of legal punishment against torture
5. Punishment for rape between married couples
6. The gradual abolition of the National Security Law
7. Abridgement of capital punishment cases
8. Establishment of regulations preventing and punishing any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Among the above mentioned recommendations, the guarantee of lawyer participation in the investigation and the guarantee of swift counselling with a judge before incarceration were approved by the Policy Committee of the Ministry of Justice. Following this approval, the Criminal Procedure Code is under revision at this stage. In addition, the Policy Committee ensured the availability of a court appointed lawyer in the matters of lawyer participation in the investigation and counselling with the judge on arrest or detention in order to practically protect the rights of defendants. This also will be considered in the revision of the Criminal Procedure Code.

III. THE CURRENT CONDITIONS AND ISSUES IN REGARD TO INMATES' TREATMENT IN KOREA

There were 45 correctional institutions across the nation with approximately 58,000 inmates at the end of 2003. The inmates include persons detained by warrant of the court and those convicted. The optimal housing capability is about 44,350. Currently, the Korean prison system houses about 14,000 inmates more than its optimal housing capacity.

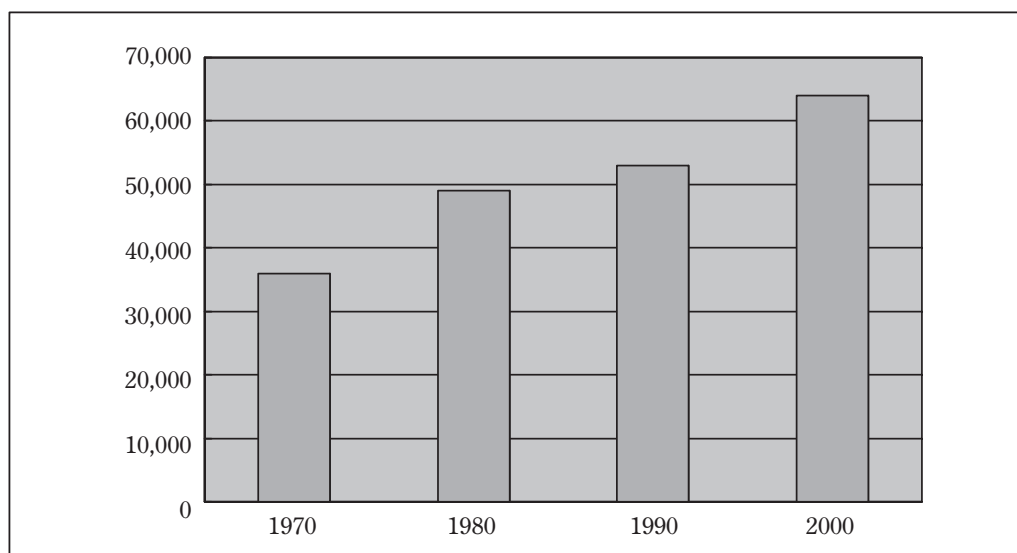
Table 5: The Change in Increasing Number of Inmates

(Unit: Person, the end of each year)

Year	1970	1980	1990	2000
Accommodation	36,000	49,000	53,000	64,000

Figure 1: The Change in Increasing Number of Inmates

(Unit: Person, the end of each year)



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The ratio of correctional officers to inmates is around 1: 5.4 and the total number of uniformed officers is 11,099 as of April 2004.

In terms of cell space, each inmate has 1.7 m². Considering these facts, overcrowding is more serious than previously thought.

Nevertheless, the construction or renovation of correction facilities to improve prison living conditions is not feasible due to the lack of budget. As an effort to rectify this issue, the Ministry of Justice amended the "Design and Building Guide for Secure Correctional Facility" in December 30, 2002 and revised the regulations on standard cell space use per inmate from 1.65 m² to 2.4 m². However, the endeavour to realize this standard will need to be carried out over a long period of time.

In terms of medical services, \$74, which is far less than required, is allocated per inmate each year. To make matters worse, there are only 151 medical staff for all the institutions - which is not sufficient to provide basic services. Also, medical facilities and the equipment are mostly outdated.

As laid out above, the present condition of the Korean correctional administration has various difficulties regarding finance and the recruitment of personnel, etc. Whereas, the enactment of the National Human Rights Commission Act and requests to promote inmates' human rights by the public have given inmates grounds to speak out for the improvement of their treatment. With this antinomy, correction staff are experiencing confusion in the performance of their various duties.

Litigation by inmates requesting better living conditions is increasing sharply. Awareness of human rights, the birth of the National Human Rights Commission, and various policies focused on human rights are believed to affect this situation more than anything else. In other words, this situation implies that the control on corrections by the court is being intensified in order to guarantee standard prison living conditions and basic civil rights of inmates.

When these cases were scrutinized, some were dismissed due to the inmates' ignorance of correctional policies and administration. Also, some cases were deemed to favour the protection of inmates' rights too much rather than policy administration when it comes to correctional administrators' view.

One of the most serious problems is that some inmates misuse human rights policy or administration to their advantage ignoring legitimate regulations and procedures. They are consequently disrupting internal orders.

The statistics on petitions decided by the National Human Rights Commission are shown on Table 6 and Figure 2.

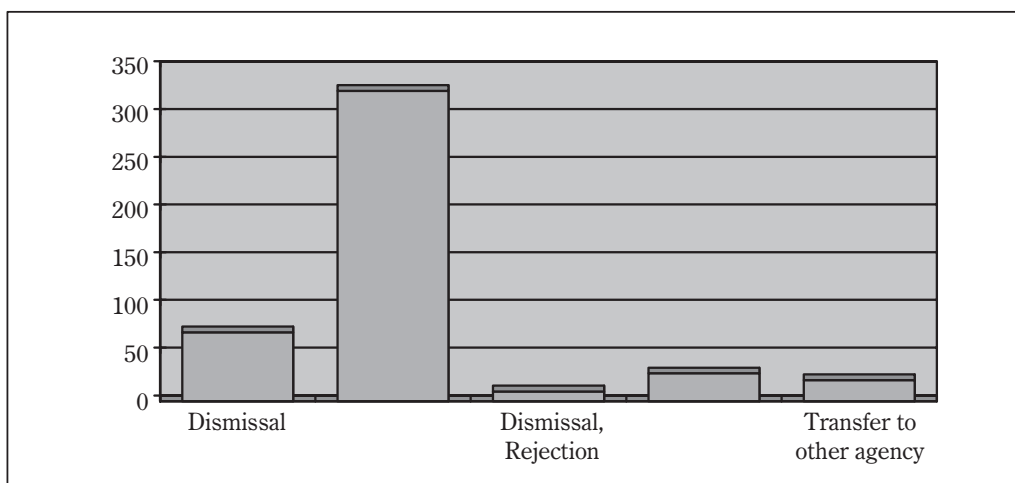
Table 6: Decisions Made By the National Human Rights Commission

(Unit: Case)

Category	Total	Dismissal	Rejection	Dismissal, Rejection	Recommendation	Transfer to other agency
Number	458	72	325	10	29	22

Figure 2: Decisions Made By the National Human Rights Commission

(Unit: Person)



The National Human Rights Commission was established on November 25, 2001. There were 4,226 petitions up until June 30, 2003. Among them 458 cases were concluded with 29 recommendations. Except for these 29 recommendation cases, almost all cases (approximate 94 %) were cancelled or regarded by the Commission as having no grounds for inspection.

As a result, correctional officers in the field are asking for more strict disciplinary punishment. Considering the fact that protection of human rights within prison can only be insured as long as internal order is established, the revision of the Penal Administration Act is inevitable. Inmates who violate major disciplinary regulations repeatedly should be given more harsh punishment, such as excluding their disciplinary punishment term from their prison service term, within strict conditions. A monetary penalty or visiting judge system may also be possible options.

IV. THE PROBLEMS IN THE APPLICATION OF THE UNITED NATIONS RECOMMENDATIONS AND ITS SOLUTION

A. Accommodation

1. United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 10, Specification of minimum floor space use

Article 19, Provision of a separate bed and of separate and sufficient bedding in accordance with local or national standards to all inmates

Article 21, Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

Article 86, Untried prisoners shall sleep singly in separate rooms, with the reservation of different local customs in respect of the climate.

2. The Application of the Standards in Korea

Sharing a cell with other inmates is the usual way of housing inmates because of an insufficient number of cells and overcrowding, even if the provision of a solitary cell is stipulated in the regulations.

Several detention centres are high-rise structures and therefore cannot provide outdoor exercise. Given that high-rise structures are the norm in order to address the overcrowding problem, the application of the standards is difficult in practice.

A large scale correctional facility should not be constructed. Correctional facilities which are annexed to relevant agencies or departments such as the prosecutors' office or the court should be encouraged to

maximize the effect of criminal justice procedure and inmates' treatments.

High-rise correctional facilities, which are prevalent in Korea to solve the problem of overcrowding, are also facing difficulties. The NIMBY (Not in My Backyard) movement in Korea, that shows a hostility towards correctional facilities, make it more difficult even to select a facility site. An effort to make the public understand that a correctional facility is not a bad thing but will bring improvements to the local economy and other positive results, needs to be continually made.

In addition to this, the endeavour to overcome outdated prison management, which has depended mainly on human resources in the operation of facilities and treatment of inmates, and to facilitate an environment in which appropriate inmates' treatment can be performed, should be made.

For example, every inmate should be supervised by correctional officers in visitation with their family or friends. And a correctional officer always has to guard inmates at each dormitory. These conditions require a system wholly dependent on staff.

B. Custody Management

1. United Nations Standard Minimum Rules for the Treatment of Prisoners
Article 54, Statement on the use of force.

2. The Application of the Standards in Korea

United Nations Standard Minimum Rules for the Treatment of Prisoners restricts the use of force and firearms more strictly than the Penal Administration Act of Korea. Carrying firearms in an inmates' presence is prohibited in principle.

Article 14 and 15 of the Penal Administration Act of Korea stipulates the conditions under which the use of force or firearms may be used. When it comes to an inmates' serious violation of internal orders, causing fatal danger to the facilities or equipment including an attempt to escape, force or firearms may be used. However, the conditions in which force or firearms are used should be interpreted in a more limited way. Particularly, escape or escape attempts should be translated as continuing to escape even if there has been intervention by the correctional officers.

C. Visitation and Others

1. The United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 39, Prisoners shall be regularly informed of the more important items of news by having access to newspapers, periodicals or special institutional publications, by wireless transmissions, lectures or any similar means as authorized or controlled by the administration.

2. The Application of the Standards to Korea

With the installation of TV sets in all cells, this has minimized the alienation caused by indirect contact with the outside.

Since the introduction of a Video Visit System in seven correctional institutions through the intranet of the Ministry of Justice in 2003, the system has expanded to all correctional institutions across the nation. This system was devised for the convenience of visitors who would otherwise have to travel a long distance.

D. Medical Services

1. United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 22-1, at every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry.

Article 22-3, the services of a qualified dental officer shall be available to every prisoner.

2. The Application of the Standards in Korea

As mentioned above, it is difficult to provide appropriate medical services because of overcrowding and a shortage of medical staff.

With a ratio between doctors and inmates far higher than that of the community, and facilities and equipment that are outdated, the adequate provision of medical services for prisoners is a serious problem. Without significant counteraction, therefore, recruiting well qualified medical officers is next to impossible.

In order to improve medical services, which are now a main topic of the Task Force of the Ministry of Justice, short-term and long-term policies are being implemented. The following measures are being planned and are on the way to being implemented: Training assistant nurses among the correctional officers, recruiting more public doctors within prisons and giving health insurance to all inmates.

E. Disciplinary Punishment

1. United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 30-2, No prisoner shall be punished unless he has been informed of the offence alleged against him/her and given a proper opportunity of presenting his/her defence.

Article 32-1, Punishment by close confinement or the reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

Article 34, the patterns and manner of use of instruments of restraint shall be decided by the central prison administration.

2. The Application of the Standards in Korea

According to critics, discipline is too extensive for inmates to observe and limits their living more than is required.

The reduction of diet referred to in the United Nations Standard Minimum Rules for the Treatment of Prisoners was abolished as it breaches human rights. Protecting inmates' human rights was portrayed in this decision.

The involvement of community members in the Disciplinary Punishment Committee was introduced to ensure objectivity.

The Correction Task Force within the Ministry of Justice was established to develop policies and revise relevant laws and regulations in August 2003. The work of the Task Force Team will focus on the promotion of human rights within prisons taking into consideration the criticism on human rights of the people in custody. The Correction Task Force Team is composed of human rights movement group members, specialist from universities and the community and staff of the Correction Bureau. They discuss how to amend the Penal Administration Act and its subordinate regulations. As the first fruit of the discussion, the revision of the "Ministerial Decree on Discipline and Punishment" and "Ministerial Decree on the Patterns and Manner of Use of Restraint" has been prepared.

It is desirable to delete No. 35 of Article 3 of the "Ministerial Decree on Discipline and Punishment" and to specify the conditions that require disciplinary punishment. Also, guarantee of due process, where a proper opportunity is given to an inmate to present his or her defence where practically possible, is required.

F. Grievance Resolution

1. United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 36-3, Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in a proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

2. Good Examples in the Application of the Standards to Korea

Every inmate can make a request or complaint to the Minister of Justice's Department or inspection officials when they are not satisfied with their treatment within prison. This grievance procedure is articulated in the Penal Administration Act to exclude prior inspection or accompanying disadvantage.

As a reference, the grievance resolution methods against the breach of an inmates' rights and maltreatment is shown in the following table.

Table 7: Category of Grievance Resolution

Category of Grievance Resolution	
Judicial Resolution	Un-judicial Resolution
Administrative Litigation	Petition to the Minister or Inspection Officials Interview with Warden
Civil (Criminal) Suit	Petition to the National Human Rights Commission
Constitutional Suit	Administrative Decision Civil Appeal Inspection System

G. Inmates under Trial

1. United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 93, For the purpose of his/her defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his/her legal adviser with a view to his/her defence and to prepare and hand to him/her confidential instructions.

2. The Application of the Standards to Korea

Legal aid by visiting lawyers of the Korea Legal Aid Corporation is being provided in all 63 correctional facilities including prisons, detention centres and juvenile prisons and other institutions across the nation in order to reinforce the counselling system for inmates' grievance resolution and to facilitate legal assistance. From June 16, 2003, when visiting legal aid started, to December 15 of the same year, 3, 387 legal consultations were conducted.

H. Open Door Policy - Toward Community-Based Treatment

Traditional inmates' treatment behind bars has been one of the major parts of the criminal justice system since the establishment of modern society, and has played a key role in correction. To sum up, imprisonment has functioned to separate criminals from society and eliminate malignancy, and consequently return them to society as sound citizens.

This system, however, has limited inmates' contact with outside and made it difficult for them to adjust themselves into society after release. Critics also maintain that just putting people behind bars does not facilitate self-reliance and accountability, and causes various side-effects such as getting criminals more involved in crime and made inmates' rehabilitation more difficult as a result.

Therefore, the balance is now moving towards open treatment or treatment outside prison by supplementing or mitigating traditional treatment according to contemporary correctional ideology to facilitate a successful return to society.

The pattern of open treatment is classified mainly as treatment in the society and treatment within a facility. The following open treatments are currently in operation: furlough, weekend leave, conjugal visits, day leave for work, study tour in the community, open treatment in an open facility, etc. However, halfway houses, community treatment centres, community diagnostic and treatment centres or other similar systems have not yet been introduced.

The future of correctional administration is expected to focus on the symmetry between treatment within prison and treatment in the community by giving more freedom to inmates. Therefore, an open door policy into society is required more than at anytime else.

Nevertheless, the open door policy and expansion of community treatment may increase the possibility of disturbances, and may put more responsibility and risk on society and the correctional authority.

Therefore, sharing the responsibility and risk with all members, including correctional staff, inmates and the public in equal measure is necessary to successfully implement an open door policy.

As the open door policy is not treatment within prison but treatment in the community, the community should open its arms and accept the possibility of contact or association with inmates. Also, the effort to relieve social conflicts through this policy will make the correctional goal, i.e., inmates' rehabilitation, be accomplished in a shorter time.

V. CONCLUSION

Throughout the United Nation's activities, many standards, norms and recommendations have been developed and adopted, and are being complied with for inmates' treatment. Major examples of this are the 'Basic Principle for the Treatment of Prisoners', 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', 'Code of Conduct for Law Enforcement Officials', 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice', 'Basic Principles on the Use of Force and Firearms by Law Enforcement', etc.

As illustrated earlier, the Korean correctional administration has tried to realize the Universal Declaration of Human Rights and other international standards and norms in respect of its laws and regulations. Nevertheless, some areas need improvement. In an effort to meet those recommendations, the Korean government has taken various measures for the promotion of human rights and has reported the results to international organizations.

The Korean correctional administration is currently pursuing openness through broad community involvement. As a part of this policy, private prisons are being introduced with the enactment of relevant laws and regulations.

In conjunction with the elevated role in the United Nations, Korea should devote its efforts to the internationally cooperative challenge by actively participating in international conferences for crime prevention and criminal justice, and by supporting the United Nation's activities in terms of human resources and finances.