

amnesty international



Republic of Korea
Submission to the UN

Universal Periodic Review
Second session of the UPR Working
Group, 5-16 May 2008

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Key Words: death penalty, national security, migrant workers.

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*):¹

- In section B, Amnesty International raises concern over the death penalty and the National Security Law
- In section C, we describe concerns related to migrant workers and use of force against irregular workers by police and security forces
- In section D, Amnesty International makes recommendations in the areas of concern listed.

B. Normative and institutional framework of the State

The death penalty

1. 30 December 2007 marked the ten year anniversary since the Government of the Republic of Korea (South Korea) last carried out any executions. Amnesty International therefore considers South Korea "abolitionist in practice". On 31 December 2007 President Roh Moo-Huyn commuted six death row prison inmates' sentences to life imprisonment.
2. However, 58 prisoners remain on death row in South Korea and certain crimes still carry the death penalty. In 2007 two death sentences were passed. The Special Bill to Abolish the Death Penalty has been before the Legislation and Judiciary Committee of the National Assembly since 2005. If not voted on before the end of the current parliamentary session, the Special Bill will lapse in March 2008. Given South Korea's de facto status as "abolitionist in practice" Amnesty International had hoped that the country would have been able to support the resolution adopted at the 2007 session of the UN General Assembly calling for a global moratorium; South Korea abstained in the vote.

The National Security Law

3. The National Security Law (NSL), in force since 1948, has been used throughout the years to imprison people for engaging in peaceful political activities. The law provides long sentences or even the death penalty for "anti-state" and "espionage" activities, but these terms are not clearly defined. Vaguely worded clauses in the NSL have been used

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

arbitrarily against people peacefully exercising their rights to freedom of expression and association. Most arrests these days are made under Article 7 of the law that provides sentencing of up to seven years' imprisonment for "praising" or "benefiting" the "enemy" (generally referring to North Korea).

4. The NSL has been used frequently as a form of censorship, to imprison people for publishing and distributing material deemed to "benefit" North Korea. Lee Si-Woo was arrested on 23 April 2007 under the NSL and is accused of violating articles 4, 7 and 8 of the NSL by "disclosing national/military secrets", and propagating the ideology of "an enemy state". He had published information in a report for the Korean Campaign to Ban Landmines on US military presence in South Korea. His report was based on information obtained legally from the government through Freedom of Information laws. His investigation was reportedly given the go-ahead by the South Korean government and the report was published in 2003.²
5. In its concluding observations on the third periodic report by South Korea the Human Rights Committee expressed concern that "prosecutions continue to be pursued, in particular under Article 7 of this law [i.e. the International Covenant on Civil and Political Rights]. Under such provision, the restrictions placed on freedom of expression do not meet the requirements of article 19, paragraph 3 of the Covenant" and urged the State party, as a matter of urgency, to ensure compatibility with requirements under the Covenant.³ Similar earlier recommendations by the Committee to amend the NSL in order to bring it into line with international standards regarding clarity of criminal law have not been followed up.

C. Promotion and protection of human rights on the ground

Migrant workers

6. As far as Amnesty International is aware, South Korea became the first labour-importing country in Asia to seek to protect the rights of migrant workers when it introduced the Act Concerning the Employment of Migrant Workers (EPS Act) in August 2003. As of 2007 the number of migrant workers in South Korea is estimated at 502,082, of which it is estimated at least 210,000 are irregular. Despite introduction of the EPS Act, migrant workers, both regular and irregular, continue to face discrimination in the work place and abuse by employers and state officials.
7. Women, who constitute roughly one-third of all migrant workers in South Korea, are particularly vulnerable to exploitation, such as discrimination in wages compared to their male counterparts, sexual harassment and violence. Lack of mandatory health insurance also affects women migrant workers who become pregnant but who cannot afford appropriate health care or regular check-ups. Reports suggest that even after miscarriages many migrant women continue to undertake the same heavy workload they did before becoming pregnant. Many women migrant workers who have experienced sexual violence claim that they were threatened by their employer with forcible return to their home country if they reported the incident.

² Lee Si-Woo's trial is on-going at the time of writing. He faces up to 10 years in prison.

³ UN Doc. CCPR/C/KOR/CO/3, 28 November 2006, para. 18.

8. Since November 2003, the South Korean government has implemented a series of crack-downs leading to the arrest, detention and deportation of irregular migrant workers. In February 2007, the Seoul High Court issued a judgement invalidating the authorities' rejection of the Migrant Workers' Trade Union's (MTU) notice of its establishment as a union. This ruling in effect recognises and thereby legalises the MTU as a trade union whose aim is to defend the rights of all migrant workers, regardless of their status. The Ministry of Labour has reportedly appealed against this decision to the Supreme Court.
9. Three senior officials of the MTU were arrested on 27 November 2007 and taken to a detention centre in Cheongju, Northern Chunchong Province, south of Seoul. They were detained for being "in an irregular or undocumented situation". In the morning of 13 December they were deported to their countries of origin in secret and without due process. Amnesty International believes that this action represents a serious violation not only of these individuals' rights, but more generally of migrant workers' right to freedom of association and specifically to form and join trade unions. This right is provided in Article 22 of the International Covenant on Civil and Political Rights, which legally binds South Korea as a state party.
10. Amnesty International has received persistent reports of poor conditions, below those outlined in the UN Standard Minimum Rules for the Treatment of Prisoners, in detention facilities for migrant workers. There are reports of abuse, and cruel, inhuman or degrading treatment or punishment by security personnel against irregular migrant workers held in detention while they await deportation. Poor conditions in detention facilities became tragically evident in a fire at the Yeosu Detention Centre on 12 February 2007, which left 10 dead and 17 injured. When the fire broke out the fire alarm system failed, the sprinkler system did not work, there were fewer guards on duty than required in law, and the guard closest to respond to the fire did not possess a key to open the cells of the detainees. The relatives of those killed in the fire were given compensation. The other detainees were deported back to their countries of origin, many without any compensation or recourse to unpaid wages.

Use of force against irregular workers

11. Amnesty International has serious concerns with regard to reports of unnecessary or excessive use of force by police and security forces against striking irregular workers at E-land department store. The Contract Based Employment Law, enacted in July 2007, requires all workers who have been on contract for two-years or more to become regular workers. Ahead of the enactment, E-land fired over 1,000 temporary staff from June 2007 to avoid making these employees into regular staff. Strikes by the E-land irregular workers have been going on for over seven months although the number of striking workers has declined over that period to around 200. The Government attempted to block the strikes by applying for a provisional disposition regarding the obstruction of business, denying workers freedom of association and the right to strike. Police use of force to break up strikers led to injuries including fractures, concussion, abrasions and bruising. Over 640 people have been arrested since the strikes began in July 2007.

D Identification of achievements, best practice, challenges and constraints

Recommendations to the Government of South Korea

12. Introduce a formal moratorium as a step toward abolition of capital punishment and expedite passage into law of the Special Bill to Abolish the Death Penalty in the National Assembly;
13. Take concrete steps to abolish the National Security Law, or otherwise amend it to bring it into line with international standards regarding clarity of criminal law, and freedom of expression and association;
14. Ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant ILO Conventions including the four ILO Fundamental Conventions highlighted in South Korea's pledge issued prior to its election to the Human Rights Council: Freedom of Association and Protection of the Right to Organise Convention (No.87), Right to Organise and Collective Bargaining Convention (No. 98), Forced Labor Convention (No. 29), and the Abolition of Forced Labor Convention (No. 105)
15. Ratify and implement ILO Conventions No.97 concerning Migration for Employment, and No. 143 concerning Migrant Workers (supplementary provisions) Convention (concerning migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers);
16. Ratify the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
17. Protect the human rights of migrant workers, including irregular migrant workers, including by respecting their rights to form trade unions, to be free from cruel, inhuman or degrading treatment or punishment, ensuring that they are not subject to arbitrary detention and expulsion without due process, and abuses of their economic, social and cultural rights;
18. Take measures to respect, protect, and fulfil the rights of all women migrant workers and ensure that they are not subjected to discriminatory practices and other human rights abuses at their workplace, such as sexual and other forms of gender-based violence and discrimination;
19. Ensure that conditions at detention facilities are consistent with international law and standards.

Appendix: Amnesty International documents for further reference

Death Penalty

- Amnesty International Annual Report extracts for Republic of Korea, 2005-2007

NSL

- *Open Letter to All Leaders of Political Parties: An Important Duty to Revitalise Efforts to Fundamentally Review or Repeal the National Security Law*, 13 October 2004, (AI Index: ASA 25/009/2004)

Migrant workers

- *Republic of Korea: AI condemns secret deportations of senior Migrant Trade Union officials*, 14 December 2007 (AI Index: ASA 25/008/2007)
- *Republic of Korea: Crackdown against Migrants' Trade Union*, 3 December 2007 (AI Index: 25/007/2007)
- *Republic of Korea: Briefing to the UN Committee on the Elimination of Discrimination against Women: Women migrant workers' discrimination in employment*, July 2007, (AI Index: ASA 25/005/2007).
- *Open letter to the President of South Korea of the fire at Yeosu Detention Centre*, 26 March 2007, (AI Index: ASA 25/002/2007)
- *Protect the Rights of Migrants in South Korea*, 18 December 2006, (AI Index: ASA 25/011/2006)
- *South Korea: Migrants are also human beings*, 17 August 2006, (AI Index: ASA 25/007/2006)