

£SOUTH KOREA

@Facts about the Death Penalty and calls for Abolition

Nine convicted murderers were executed in 1992 and some 50 prisoners are currently under sentence of death. The South Korean Government says it retains the death penalty as a deterrent to violent crime. In recent years an abolitionist movement has emerged in South Korea, supported predominantly by people from religious, academic and legal circles.

Amnesty International opposes the death penalty in all cases, considering it to be a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment. This document examines the facts about the use of the death penalty, the government's reasons for retention and the growing abolitionist debate. It concludes by making some specific recommendations to the South Korean Government.

1) Facts about the Use of the Death Penalty

The nine prisoners executed in 1992 were all convicted murderers and were executed on 29 December 1992 in Seoul and Taegu Prisons. They were the first executions to be carried out since December 1991 when those executed were also nine convicted murderers. Fourteen people were executed in 1990, seven in 1989 and in 1988 there were no executions. Some 30 prisoners were reported to be under sentence of death at the end of 1991, while the figure is now thought to be approximately 50. The apparent increase in the use of the death penalty can be attributed to the "war against crime" which the government launched in October 1990 with the aim of reducing the rate of violent crime.

The death penalty may be imposed for a wide range of criminal and political offences under the Criminal Code, the Military Penal Code, The National Security Law and several other laws. In current practice most death sentences are imposed for crimes involving murder. The last execution for a political offence was in 1982. Since then death sentences have been imposed on people convicted of "espionage" for North Korea but in all cases known to Amnesty International these sentences were later commuted. In recent years prosecuting authorities have requested the death penalty for prisoners accused of "espionage", socialist and pro-North Korean activities but the courts imposed life sentences instead.

The government recently introduced into the National Assembly a revised draft Criminal Code reducing the number of sentences subject to the death penalty. The draft Code proposes that the death penalty be abolished for ten offences where death is caused unintentionally, including traffic accidents, accidents with explosives, food poisoning and robbery. In 1992 the Ministry of Justice issued a Declaration on the Careful Application of

Capital Punishment, arguing the need for continued use of the death penalty while acknowledging that its application needs careful supervision.

Death sentences may be imposed by ordinary district courts or by military courts. The law requires that all death sentences be reviewed by a higher court and in practice most sentences are reviewed twice, by a high court and by the Supreme Court. Retrials require the production of substantial new evidence and are consequently rare. The order to carry out a death sentence must be signed by the Minister of Justice and carried out within the following five days. This order must be given within six months of the judgement becoming final. No public announcement of forthcoming executions is made and they are not carried out in public. Execution usually takes place in Seoul, Taegu or Kwangju Prisons and is carried out by hanging.

Prisoners under sentence of death are handcuffed throughout their imprisonment. They live under constant fear, never knowing when the order to execute will be carried out. Their "rehabilitation" consists of counselling sessions.

2) The Death Penalty Debate

The Government's Justification for Retention

The government uses two principal arguments to justify its continued use of the death penalty. It maintains that the death penalty is needed as a deterrent to violent crime and it argues that public opinion favours retention. The government's views on capital punishment, however, do not appear to be inflexible and government officials have indicated that abolition may be considered in the future.

The Abolitionist Movement

The Council for the Abolition of the Death Penalty was founded in 1989 by lawyer Lee Sang-hyok. Most of its members also belong to the Correctional Committee at Seoul Detention Centre and are thus directly involved with the rehabilitation of prisoners under sentence of death. The Council has also attracted the support of lawyers, academics and members of the religious community who argue that the death penalty cannot be justified in today's society. It tries to influence public opinion through the dissemination of information at public forums throughout the country, publication of articles in legal journals and other public information activities.

Abolitionists say that the public tends to favour retention of the death penalty because it is ill-informed about its use. The government's "war against crime" has led to increased media

coverage of violent and often brutal crimes and this has an obvious negative influence on public opinion. On the other hand, people closely involved with prisoners on death row, such as prison guards, lawyers and members of the religious community, are well-informed about the true nature of the death penalty and mostly favour abolition. Abolitionists also argue that there is no proven link between the death penalty and the rate of violent crime which can only be reduced when social and economic problems are solved. They argue that the penalty is irreversible and may lead to the execution of an innocent person. The death penalty also denies a prisoner the chance of rehabilitation.

Debate in the Constitutional Court

In 1989 Lawyer Lee Sang-hyok submitted a petition to the Constitutional Court on behalf of two convicts under sentence of death. The petition challenges the constitutionality of the death penalty on the grounds that it violates two articles of the Constitution: Article 10 which guarantees "human worth and dignity and the right to pursue happiness" and Article 12 which guarantees personal liberty. Review of the petition was delayed for three years, during which time one of the petitioners was executed.

In April 1992 the Constitutional Court began to examine the petition. It took the unusual step of inviting four academics, two in favour of abolition and two against, to debate the subject in court. Professor Kim Chang-son of Sung Kyun Kwang University and Professor Lee Kang-hyok of Hankuk University of Foreign Studies supported the retention of capital punishment, their arguments mirroring those used by the government. They said that the death penalty was necessary as a deterrent to violent crime and as a form of retribution for the victim. They saw no reason to abolish the death penalty when most other nations of the world retain it. Professor Lee Kang-hyok is reported to have said "capital punishment is constitutional unless it is carried out in a cruel or discriminatory way".

Professor Shim Jae-u and Professor Kim Il-su of Korea University argued in favour of abolition. Among other things, they argued that the death penalty infringes human dignity, destroys the right to life, is not an effective deterrent to crime and is irreversible. Some of their reported comments are given below:

Professor Shim Jae-u: "I think the maintenance of the death penalty is meaningless in that it has proved to be ineffective in preventing crime. . . It originated in primitive society as a means for [obtaining] retribution. . . It was a historical leftover and there is no rational basis for any civilized modern society to keep the system."

Professor Kim Il-su: "Judgements are made by human beings and, therefore, there is always a possibility of executing an innocent person".

At the time of writing, the Constitutional Court had not delivered its ruling on this petition.

Media Coverage

Although the media generally gives little coverage to the death penalty issue, both Korean and English language media gave fairly extensive and balanced accounts of the debate which took place in the Constitutional Court. Several newspapers have also published letters sent by members of Amnesty International in other countries calling for the abolition of the death penalty.

In 1992 a television program on the death penalty was broadcast by Seoul Broadcasting System. The program reconstructed the case of a prisoner who had been executed, with some discussion of the issues involved. It included interviews with prisoners under sentence of death in Seoul Detention Centre and with the relatives of victims. Some prisoners said they had repented and emphasized the constant fear they experience as part of their daily lives. The producers spoke to one relative who said she had learned to forgive her husband's murderer (she did not wish to be shown on the program). After the broadcast a number of people telephoned the television company to express their support for the abolitionist movement.

Amnesty International's Views

Amnesty International opposes the death penalty in all cases and urges all governments to take steps towards abolition. It considers the death penalty to be a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment. It supports the arguments put forward by the abolitionist movement in South Korea and encourages further debate and dissemination of information about the death penalty.

Amnesty International acknowledges that violent crime is a serious social problem in many countries. However, international research has shown that capital punishment does not act as a more effective deterrent to violent crime than other punishments. To Amnesty International's knowledge, the South Korean Government has not published any conclusive evidence to link the death penalty to the rate of violent crime.

Amnesty International believes that the general public would support abolition if it were given the full facts surrounding the use of the death penalty and the reasons for its abolition. This is primarily the government's responsibility. However the media, politicians and other

influential members of the community may also play an important role through disseminating information and stimulating debate.

Abolition: A Worldwide Trend

Almost half the states in the world have now abolished the death penalty, either in practice or in law. In Japan, where the abolitionist movement is growing very strong, there have been no executions for over three years. Japanese abolitionists include former Supreme Court judge Shigemitsu Dando, former Minister of Justice Megumu Sato and hundreds of prominent politicians and lawyers.

The UN has demonstrated its commitment to the abolition of the death penalty through the elaboration, in July 1991, of the Second Optional Protocol to the ICCPR. This Protocol is the world's first pact of universal scope aimed at the abolition of the death penalty, reflecting the general international trend towards abolition.

3) South Korea's Obligations under International Law

The International Covenant on Civil and Political Rights (ICCPR), ratified by the South Korean Government in 1990, recognises that death sentences should be restricted to the most serious crimes. Article 6(2) of the ICCPR states that:

"In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. . ."

A general comment on Article 6 of the ICCPR, adopted in 1982 by the Human Rights Committee (set up under the ICCPR) states that:

"While it follows from Article 2(2) to (6) that States parties are not obliged to abolish the death penalty totally, they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes"."

In July 1992 the UN Human Rights Committee, in its review of South Korea's implementation of the ICCPR, expressed disquiet about the large number of crimes subject to the death penalty in South Korea. The following is extracted from Comments of the Human Rights Committee on the Initial Report of the Republic of Korea:

"The Committee (also) expresses concern about the still high number of offences liable to the death penalty. In particular, the inclusion of robbery among the offences carrying the death penalty clearly contravenes Article 6 of the Covenant. . . measures should be taken to reduce the cases in which the death penalty is applied".

The South Korean Government is not a party to the Second Optional Protocol of the ICCPR, ratification of which commits states to the complete abolition of the death penalty.

4) Amnesty International's Recommendations to the Government

Amnesty International believes the death penalty is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment. It urges the South Korean Government to abolish the death penalty and commute all death sentences. As steps towards abolition it recommends that:

- 1) The government should inform the public about the facts surrounding the use of the death penalty. It should conduct a study into whether the death penalty has a real deterrent effect on crime and should encourage public debate on the issue;
- 2) A moratorium should be imposed on all executions pending the decision of the Constitutional Court on the petition challenging the constitutionality of the death penalty and pending a study into whether the death penalty has a real deterrent effect on crime;
- 3) The government should introduce legislation to further reduce the number of crimes punishable by sentence of death. Meanwhile, prosecution authorities should not request death sentences against prisoners tried for the offences which it is proposed should no longer be punishable by death in the revised Criminal Code;
- 4) The government should demonstrate its commitment to abolition of the death penalty through early ratification of the Second Optional Protocol of the ICCPR.