

£SOUTH KOREA

@Threat of Imminent Executions

People convicted of capital offences in South Korea face an acute risk of execution in the coming weeks. In recent years a pattern appears to have emerged of multiple executions being carried out at year's end. In both December 1991 and December 1992 South Korean authorities executed nine prisoners. Fourteen were executed in 1990 and seven in 1989. Amnesty International is concerned that another series of executions will be carried out this December or early in 1994. There are at least 50 prisoners under death sentence in South Korea, about 30 of whom appear to have been on death row for two years or more.

The government justifies the use of the death penalty by maintaining that this punishment is needed as a deterrent to violent crime and to maintain national security. It also argues that the public supports this form of punishment. To Amnesty International knowledge, the government has never studied whether the death penalty had a uniquely deterrent effect against crime in South Korea. It also carries out executions in secret, informing neither the relatives of prisoners, nor their lawyers, of impending executions.

The nine prisoners executed in 1992 were all convicted murderers and were executed on 29 December in Seoul and Taegu prisons. In 1991, nine convicted murderers were also executed in December, following the 14 executed in 1990. The spate of executions in recent years can be attributed to the "war against crime" which the government launched in 1990 to reduce the rate of violent crime. To Amnesty International's knowledge, the South Korean Government has not published any conclusive evidence to link use of the death penalty to a decrease in the rate of violent crime.

Secret and arbitrary executions

The decision to order an execution appears to be arbitrary. The Minister of Justice determines whether a prisoner should be executed, basing his decision on comments from the government's Correctional Committee. The Minister reportedly takes into account the severity of the crime and the prisoner's attitude in prison. Some prisoners appear to be given a reprieve for an indefinite period, while others are executed at the discretion of the Minister of Justice.

In principle, the order to carry out a death sentence must be signed by the Minister of Justice and carried out within five days. This order must be given within six months of the judgment becoming final. However delays of two to six years are common for prisoners on death row.

Prisoners under sentence of death live in perpetual fear that they may be executed. In practice, according to sources familiar with the execution procedures, prisoners are not told of their impending execution until the day it is due to take place. The media learn of executions before or soon after they take place, but families are given no advance notice at all. In at least one case, relatives of a prisoner learned from the press that he had been executed on 28 December 1992. Unofficial sources in contact with inmates on death row have indicated to Amnesty International that the prisoners, mindful of the last two years' pattern of year-end executions, are at present increasingly frightened that some among them may be executed in the next few weeks.

Amnesty International is concerned that the procedure to carry out executions in South Korea allows the Minister of Justice to exercise power arbitrarily. It is also concerned that the secrecy surrounding executions and the lengthy and indefinite wait on death row of convicts usually kept in handcuffs for long periods amounts to cruel, inhuman or degrading treatment or punishment. Such treatment or punishment is prohibited under Article 7 of the International Covenant on Civil and Political Rights, ratified by South Korea in 1991.

Long-term handcuffing: restraint incompatible with international standards

Prisoners sentenced to death generally remain handcuffed throughout their imprisonment, according to unofficial sources. This was confirmed by officials of the Ministry of Justice, who met with Amnesty International representatives in November. According to these officials, prisoners on death row are handcuffed to "prevent suicide", but prisoners considered to be in a "good mental state" may have their handcuffs removed.

Amnesty International is concerned that virtually permanent handcuffing of prisoners under death sentence amounts to an additional punishment and constitutes cruel, inhuman and degrading treatment or punishment. Prevention of suicide cannot be used as an argument not to comply with relevant international standards on the treatment of prisoners. The United Nations *Standard Minimum Rules for the Treatment of Prisoners* states that "instruments of restraint", including handcuffs, "must not be applied for any longer time than is strictly necessary" (Articles 33 and 34).

Enquiry into the constitutionality of the death penalty

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. Currently, most death sentences are imposed for crimes involving murder. However there are more than 100 different offences, including political offences, for which the death penalty can be imposed.

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 to imprisonment. In recent years, when prosecuting authorities requested the death penalty for "espionage" or "anti-state" activities, a life sentence was granted instead.

The authorities claim that public opinion supports the view that extreme sentences should be imposed for brutal crimes. However, opposition to the death penalty among South Koreans appears to be growing. While public opinion is in favour of the death penalty, many academics and people professionally involved in the process of imposing and executing the death sentence - prison guards, lawyers and religious people - hold abolitionist views. They believe that maintaining the death penalty does not result in a reduction in crime. The abolitionist movement in South Korea is led by the Council for the Abolition of the Death Penalty, founded by lawyer Lee Sang-hyok.

In 1992 South Korea's Constitutional Court directly addressed for the first time the appropriateness of the death penalty as a punishment, by inviting four scholars to debate the issue before the Court. The debate was prompted by a petition challenging the constitutionality of the death penalty filed by Lee Sang-hyok on behalf of two convicted murderers.

On 25 November 1993, the Constitutional Court delivered a ruling rejecting this petition, apparently on technical grounds: the petition, the Court said, had been submitted after the two convicted murderers's death sentences had been confirmed. It appears that the Constitutional Court did not rule on the substance of the case. One of the convicted prisoners was executed while the review of the petition was under way. The action to execute a person while a petition is awaiting review by the Constitutional Court is considered legal under South Korean law.

Amnesty International's recommendations

Amnesty International opposes the death penalty in all cases. 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 or punishment.

◆ **Amnesty International urges the South Korean Government to abolish the death penalty.**

◆ **As a temporary measure until such abolition takes place, the government should stop carrying out any executions and systematically commute all death sentences.**

◆ Amnesty International also calls on the South Korea Government to **immediately end the long-term handcuffing of prisoners sentenced to death**, and to use other instrument of restraint only in accordance with relevant international standards.