

REPUBLIC OF KOREA (SOUTH KOREA)

@The Death Penalty: Open Letter to the Minister of Justice

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Mr Ahn Woo-man
Minister of Justice
Ministry of Justice
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Seoul, Republic of Korea

Dear Minister

Fifteen people were executed in the Republic of Korea (South Korea) during 1994, the highest number for many years and the first executions since December 1992. As a new year begins, I am writing to express Amnesty International's concern about the continued use of the death penalty in South Korea and to urge your government to join the growing number of countries throughout the world which have abolished the death penalty in law.

The 15 executions were carried out on 6 October at prisons in Seoul, Taegu and Pusan. Some 50 prisoners, all convicted of murder, are currently under sentence of death in South Korea. Amnesty International opposes the death penalty in all cases, considering it to be a form of cruel and inhuman punishment. It is also concerned that executions are carried out arbitrarily and that prisoners under sentence of death live in a state of perpetual fear, some permanently handcuffed. Some were reportedly ill-treated during police interrogation and may not have had a fair trial.

Global trend towards abolition of the death penalty

Amnesty International is campaigning for worldwide abolition of the death penalty. An increasing number of countries are deciding to opt for abolition, including a number of countries in Asia. Hong Kong abolished the death penalty in 1993, Nepal in 1990, New Zealand in 1989 and Australia in 1985. Almost all European states are abolitionist. Apart from Japan and 37 states in the USA, South Korea is one of the few industrialised nations to retain capital punishment.

After the 15 executions in October 1994 the Ministry of Justice said that the death penalty was a normal and accepted practice in South Korea. Amnesty International believes that today the arguments in favour of change are overwhelming. The death penalty is a cruel punishment; it does not have a proven and unique deterrent effect; it may be inflicted on the innocent; many of its victims are poor and unable to present an effective defence.

The global trend towards abolition is reflected in the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty. Amnesty International is urging all states, including South Korea, to ratify the Second Optional Protocol.

South Korea is already a party to the International Covenant on Civil and Political Rights (ICCPR) which states under Article 6 that the death penalty may only be inflicted for the most serious crimes. In South Korea the death penalty exists in law for over 100 offences, including political offences. All of those currently under sentence of death are convicted of murder but death sentences are sometimes sought on political charges. In November 1994 prosecutors sought a death sentence for Ahn Jae-ku on charges under the National Security Law for his alleged "espionage" activities. Ahn Jae-ku was later sentenced to life imprisonment. Amnesty International considers him to be a prisoner of conscience and is calling for his immediate and unconditional release.

In July 1992, in its comments on the initial report of the Republic of Korea, the United Nations Human Rights Committee expressed concern about the high number of offences liable to the death penalty and recommended that *"measures should be taken to reduce the cases in which the death penalty is applied"*.

The death penalty as a cruel, inhuman and arbitrary punishment

Amnesty International opposes the death penalty in all cases, considering it to be the ultimate form of cruel, inhuman and degrading punishment.

In South Korea the procedure to carry out executions permits you, as Minister of Justice, to exercise power arbitrarily. The order to carry out a death sentence must be signed by the Minister of Justice and should be made within six months of a judgement becoming final. In practice, longer delays occur and the decision to order an execution appears to be motivated by political considerations. The executions which took place in October 1994 appear to have been a response to a widely-reported case in which six men, arrested in September, were convicted of multiple murder and sentenced to death. Two former Ministers of Justice did not order executions during their terms of office, apparently out of personal opposition to the death penalty.

Prisoners under sentence of death live in perpetual fear that they may be executed at any time. In practice, prisoners are not told of their impending execution until the day it is due to

take place. No public announcement is made in advance and families are not informed. Those in contact with prisoners under sentence of death in Seoul Detention Centre have told Amnesty International of the acute fear felt by prisoners on the morning of 6 October 1994 when they learnt that executions were taking place. At this time there were around 45 prisoners under sentence of death in Seoul Detention Centre. Ten were executed but none of the prisoners knew which ten would be chosen for execution.

Some prisoners under sentence of death are held in handcuffs for 24 hours a day. In October 1994 Ministry of Justice officials told Amnesty International that handcuffs are sometimes required to prevent a prisoner from committing suicide. But Amnesty International believes that permanent handcuffing of prisoners under sentence of death amounts to an additional arbitrary penalty and constitutes cruel, inhuman and degrading treatment or punishment. Prevention of suicide should not be used as an argument for failing 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).

The death penalty does not have a uniquely deterrent effect

In October 1994 Ministry of Justice officials told Amnesty International that the death penalty should be maintained because of its deterrence value. They said that the death penalty was needed to curb the growth of violent crime but they did not say whether your government has ever carried out a survey into the effect of the death penalty on the crime rate. To Amnesty International's knowledge, none of the surveys carried out in other countries have shown that the use of the death penalty has a uniquely deterrent effect on violent crime.

The death penalty is often inflicted on those least able to defend themselves; it is irreversible and may be inflicted on the innocent

Throughout the world, countries which apply the death penalty often do so against those who are least able to defend themselves. In South Korea some of those under sentence of death are from poor, deprived backgrounds and Amnesty International knows of cases where the prisoner's family could not afford to pay for a lawyer to defend the prisoner. Amnesty International knows of three prisoners under sentence of death who claim to have been tortured or ill-treated during police interrogation and forced to confess to some or all of the charges against them. Amnesty International is concerned that there appears to have been no independent investigation into these reports of torture and ill-treatment.

Kim Chol-oh, aged 24, said that he was beaten by police officers after his arrest in September 1990. He was aged 19 at the time and his family could not afford to hire a lawyer. He

claims to be innocent of some of the charges against him. A lawyer was assigned to him by the court, but Kim Chol-oh met with him for only a very short time just before the trial and he did not attend all the trial hearings. Kim Chol-oh was therefore unable to present an effective defence. Amnesty International is concerned that Kim Chol-oh did not have a fair trial.

Two Pakistani prisoners, Mohammad Ajaz and Amir Jamil, claim that they were tortured after their arrest in September 1992 and convicted largely on the basis of a "confession" which was retracted in court. They claim to be innocent of the charges against them.

Amnesty International's recommendations

- ◆ Amnesty International urges the South Korean Government to abolish the death penalty in law.
- ◆ Pending abolition the government should stop carrying out executions and commute all death sentences.
- ◆ The government should end the long-term handcuffing of prisoners under sentence of death.
- ◆ The government should ratify the Second Optional Protocol to the ICCPR.
- ◆ An independent inquiry should be established to investigate reports that some prisoners under sentence of death were ill-treated during interrogation and may have been convicted unfairly.

I hope your government will consider the arguments and recommendations made in this letter, and look forward to receiving your response.

Yours sincerely

Pierre Sané
Secretary General