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1) INTRODUCTION

The strengthening of human rights guarantees in the Constitution of the Republic of Korea (South Korea) which came into force in February 1988 and the subsequent legislative changes were welcomed by Amnesty International. There is still concern, however, that some political prisoners have been denied the right to a fair trial, that the government has failed to take effective steps to end torture and ill-treatment, that current legislation restricts some essential aspects of the rights of freedom of expression and association, and that the death penalty has not yet been abolished.

Among the provisions introduced into the new Constitution were an express prohibition of censorship of speech and the press and a guarantee of the rights of workers to collective action. The new Constitution also strengthened some of the basic rights related to arrest procedures, making it mandatory for the arresting authorities to inform a person of the reason for his or her arrest and of his or her right to contact a lawyer. Several laws which had restricted the exercise of rights of freedom of expression and association were subsequently amended or repealed. In April 1989 a new Law on Assemblies and Demonstrations was introduced to replace a similarly named law which had banned "demonstrations likely to cause social unrest", and under which prisoners of conscience had been detained in the past. In May 1989 the National Assembly repealed the Public Security Law of 1975, under which the Minister of Justice had been able to order the administrative detention of prisoners who had completed sentences for national security offences if he did not consider them "thoroughly anti-communist". All 35 prisoners held under this law were released within a few months of its repeal. The National Security Law, which prescribes long prison sentences or the death penalty for anti-state activities and contacts with anti-state organizations, was amended in May 1991. The amendments permit contact with communist organizations or governments in other countries, except those allegedly linked to North Korea, and also make "praising, encouraging or showing sympathy" to North Korea punishable only when committed with the knowledge that it will endanger state security.

Amnesty International remains concerned that some essential aspects of the rights of freedom of expression and association are still restricted by provisions of the National Security Law, the Social Surveillance Law, the Labour Dispute Mediation Act, the Law on Assemblies and Demonstrations and administrative regulations requiring the ideological "conversion" of some political prisoners. It believes that more effective measures are needed to eradicate torture and ill-treatment and that there should be a systematic review of all cases of prisoners convicted of national security offences who claim that they were forced to confess under torture.

To Amnesty International's knowledge few prisoners who were detained for the non-violent exercise of their rights of freedom of expression and association, or who claim that they were tortured or ill-treated in custody, or who claim that their convictions were based on a confession obtained under torture, have been given effective remedies. Although in recent years Amnesty International has received many reports of detainees alleging they were tortured or ill-treated in custody, only a few appear to have been investigated and only a few trials of law enforcement officials accused of torturing prisoners have been reported.

In recent years, a number of prisoners convicted of political offences have been released under
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presidential amnesties. In May 1991, 74 prisoners convicted under the National Security Law were released in a presidential amnesty. A further six elderly and sick long-term political prisoners were released in December 1991. Political prisoners are rarely acquitted by the courts, although some are released after trial with suspended prison sentences.

The new Constitutional Court, established in 1988, has issued judgements which have strengthened guarantees of various basic rights. For example, in January 1992 the court ruled that law enforcement officials should not monitor or record interviews between lawyers and their clients. Amnesty International is, however, concerned that other decisions of the Constitutional Court do not give sufficient protection to human rights. In April 1990 the court upheld the constitutionality of Article 7 of the National Security Law which punishes the act of praising, benefitting or siding with an anti-state organization. In January 1990 the court ruled Article 13(2) of the Labour Dispute Mediation Act, prohibiting third party intervention in a labour dispute, to be constitutional. Both these laws have been used to imprison people in violation of their rights to freedom of expression and association. In two separate rulings, in July 1991 and April 1992, the court upheld the constitutionality of the laws banning teachers from private and public schools from forming trade unions.

2) THE PROHIBITION OF TORTURE AND ILL-TREATMENT

Despite a widespread national outcry at the death under water torture of student Park Chong-chol in 1987, the government has failed to take effective steps to end torture and ill-treatment. Many prisoners have alleged and continue to allege that they were beaten and deprived of sleep during interrogation, although water torture and electric shock torture appear to be no longer used. Few reports of torture and ill-treatment appear to have been independently and impartially investigated in conformity with international standards and few cases have led to prosecution of law enforcement officials.

In its report submitted to the Human Rights Committee in July 1991, the South Korean Government stated that 29 public officials were prosecuted for inflicting torture in the years 1986 to 1990 but omitted to give any further details, such as the names of the officials in question or the trial result.

Amnesty International knows of only three cases during the period 1986 to 1992 in which law enforcement officials were prosecuted for inflicting torture on political prisoners and where compensation was paid to the victims. Few cases concerning the prosecution of officials for inflicting torture on ordinary criminal suspects have been reported. In the first, a police officer was sentenced to five years' imprisonment for torturing student Kwon In-suk in 1986. In January 1990 Kwon In-suk was awarded 40 million won (US\$ 50,800) compensation for the torture inflicted on her and for attempts by the prosecution and the Agency for National Security Planning to cover up the case. In the second, five police officers were convicted and sentenced to prison terms ranging from five to 10 years' imprisonment for torturing student Park Chong-chol to death in January 1987. Four senior police officers were found guilty of attempting to cover up the torture and were given suspended prison sentences of between eight months and two years. In the third, in January 1991, four police officers were sentenced to prison terms ranging from two to five years for torturing Kim Keun-tae, a prominent dissident, in January 1985. In January 1992, a Seoul court awarded 45 million won (US\$ 57,155) to Kim Keun-tae as compensation. In the case of Kim Keun-tae the judge reportedly commented that officials had attempted to cover up the

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case and had destroyed evidence of torture.

While welcoming these judgments, Amnesty International remains concerned that the authorities have failed to order independent and impartial investigations in accordance with international standards into many reported cases of torture and ill-treatment, particularly of prisoners held for political offences.

The authorities only appear to investigate allegations of torture and ill-treatment if the victim or the victim's family makes an official complaint to their district prosecutor's office. Amnesty International has been told that many people are either unaware of their right to make a complaint or do not believe they will obtain justice. Reports concerning the methodology and results of such investigations are not generally made publicly available and there are no independent bodies empowered to investigate allegations of torture and ill-treatment. The decision to prosecute law enforcement officials lies with the prosecutor's office which, according to lawyers, is often reluctant to proceed. The lack of an independent body to investigate violations and the problems in bringing a successful prosecution have made it very difficult for the victims of torture to obtain justice.

The Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on 9 December 1975, outlines the circumstances in which such an investigation should be carried out:

Article 8: "Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official, shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned."

Article 9: "Wherever there is reasonable ground to believe that an act of torture as defined in Article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint."

A further area of concern relating to torture involves some 25 prisoners who are serving lengthy prison terms for alleged espionage activities and who allege that they were convicted on the basis of confessions made under torture. These prisoners were arrested under national security legislation in the late 1970s and 1980s under previous governments. They include Nah Jong-in who was arrested in April 1985 and sentenced to 15 years' imprisonment for allegedly visiting North Korea and receiving espionage training. At his High Court appeal the judge is reported to have accepted Nah Jong-in's claims that he was tortured but to have upheld the sentence. They also include Ham Ju-myong who was arrested in February 1983 and sentenced to life imprisonment for alleged espionage activities. He claims that he was subjected to electric shock and water torture during three months of interrogation and was denied access to his family for three months after his arrest. In response to letters from Amnesty International members, the South Korean Government wrote to the organization in September 1991 giving a general outline of each case and the charges against the prisoners but failing to address the allegations of torture, which do not appear to have been adequately investigated.

In recent years several prisoners have complained that they were beaten and deprived of sleep during interrogation. Pang Yang-kyun, secretary to National Assembly member Suh Kyung-won, was arrested in July 1989 and sentenced to seven years' imprisonment under the National Security Law for failing to report Suh Kyung-won's unauthorized visit to North Korea and for allegedly passing state secrets to a

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North Korean agent. During his trial, Pang Yang-kyun alleged that he had been subjected to beatings, death threats and sleep deprivation by the Agency for National Security Planning (ANSP) and the prosecution. He also said that he had been forced under torture to sign a statement agreeing not to disclose his treatment by the ANSP. In its verdict the court conceded that:

"In Pang Yang-kyun's case the court cannot rule out the possibility that he was tortured while being interrogated at the Agency for National Security Planning. But it cannot be viewed that such duress continued while he confessed to prosecutors."

In a written response delivered to Amnesty International in January 1991, the South Korean Government said that Pang Yang-kyun had admitted to the charges against him and denied ill-treatment in the presence of his defence lawyer. It said, "During the court proceeding he admitted most of the major criminal acts and his admission proves that the confession he made at the investigation is true and correct." On the basis of this response Amnesty International is concerned that the authorities do not appear to have conducted an impartial investigation into Pang Yang-kyun's claims that he was tortured.

Another case concerns artist Hong Song-dam who has served a three-year prison term under the National Security Law for producing material benefiting North Korea and, in particular, for sending a photographic slide of a mural entitled History of the National Liberation Movement to North Korea. Hong Song-dam was interrogated for three weeks following his arrest in July 1989. During this time he was denied access to his lawyer and he claims that he was not allowed to sleep for more than one to three hours a day. He also claims that he was stripped naked and beaten around the head and on his hands to make him confess that he had visited North Korea. During Hong Song-dam's trial in September 1989 a forensic pathologist told the court that he had carried out a medical examination of the defendant and had ascertained that he still bore bruises that were the direct result of "battery and kicking". Hong Song-dam filed a complaint about his torture to Seoul District Prosecutor's Office but lawyers and local human rights groups have been unable to find out whether an investigation has been carried out.

In a written response delivered to Amnesty International in January 1991 the South Korean Government said that Hong Song-dam had stated in court that he "did not have any medical problems, was not ill-treated, and is healthy". It also said:

"Hong Song-dam testified about details only he could know, corrected in his own handwriting, even the small details in a certain report, and even added sentences which are favourable to himself at the end of the report. This proves that Hong Song-dam was not forced to make his statement by the investigative unit. In the courtroom his insistence that he had been tortured was not admitted."

It added that his complaint with Seoul District Prosecutor's Office was still pending. Amnesty International believes this response to be inadequate and is concerned that an impartial and independent investigation does not appear to have been conducted into Hong Song-dam's claims that he was tortured.

Several members of Sanomaeng (Socialist Workers' League) claimed to have been tortured following their arrest under the National Security Law in October 1990. They included 27-year-old Lee Song-su who told his lawyer that he had been beaten by his interrogators because he refused to answer their questions. In March 1991 the leader of Sanomaeng, Park Ki-pyong, was arrested. Park Ki-pyong told his lawyers that during his interrogation by the Agency for National Security Planning he had only been

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allowed to sleep for two to four hours each night during the first 25 days of his imprisonment and that he had been beaten on three occasions by a group of around 13 interrogators. He is said to have attempted suicide as a result of the beatings and sleep deprivation. The UN Special Rapporteur on torture raised these cases with the South Korean Government on 6 August 1991. In its reply, dated 14 November 1991, the South Korean Government stated that in both cases the courts had rejected the complaints of torture. However it failed to provide any information about the nature of the investigation into these allegations of torture or to give the grounds on which they were rejected.

On 6 August 1991 the UN Special Rapporteur on torture also raised with the South Korean Government the case of Kong Pyong-chin, a criminal suspect who was reportedly beaten by police officers of Kangseo Police Station on 21 October 1990. In its reply, dated 14 November 1991, the South Korean Government stated, "Trying to extract a confession from Mr Kong, the interrogators forced him to kneel on the floor. Even though the above-mentioned ill-treatment could be considered trivial, the police disciplinary committee reprimanded them, as well as two senior policemen, with a caution." The government failed to give any further information about the nature of the inquiry into this incident.

Park Deuk-joon, a 27-year-old university graduate who was arrested in March 1991 under the National Security Law, alleged that he was tortured during interrogation by the Agency for National Security Planning. At his trial he testified that his interrogators had stripped him naked and forced him to kneel on the floor when he refused to comply with their demand that he confess to the charges against him. He was ordered to do press-ups and to repeat the words "bad conscience" while he was beaten on his heels with a piece of wood and threatened verbally. He was also forced to stand against a wall and do press-ups if he fell asleep. As in the case of Hong Song-dam, Park Deuk-joon filed a complaint with Seoul District Prosecutor's Office, but at the time of writing lawyers have been unable to find out whether an investigation was initiated.

In March 1992 Amnesty International wrote to the South Korean Government expressing concern about the reported ill-treatment of five members of Chunkyojo (Korean Teachers' and Educational Workers' Union) at Yongdungpo and Nambu Police Stations in Seoul on 3 March 1992 and urging that an immediate and impartial inquiry be carried out. They included Pae Choon-il, 51-year-old Vice President of the union, who claims that he was forced to lie on the floor while seven officers trod on his neck, pulled his hair, pulled his arms and legs behind him and punched him in the back and shoulder. He alleges that they continued beating him and threatening him for some 30 minutes as they attempted to take his fingerprints and that when another union member, 31-year-old Han Young-sun, complained about the treatment being inflicted on Pae Choon-il, she was herself beaten in the face, chest and stomach by a police officer while a second officer pulled her hair and hit her head against the wall. The five Chunkyojo members filed official complaints with the courts against the police officers involved. At the time of writing the South Korean authorities had not responded to Amnesty International about this incident.

Finally, Amnesty International is concerned that law enforcement personnel may not receive adequate training in international human rights standards prohibiting torture. A survey of police investigators conducted by a researcher of the Korea Institute of Criminology, published in August 1991, indicated that 60 per cent of those questioned thought there was justification for inflicting some degree of pain on criminal suspects to obtain a confession. Only four per cent are reported to have said that torture should not be used in any circumstances.

3) THE RIGHT TO A FAIR TRIAL

A prosecutor or police official is required to obtain a warrant of arrest in order to detain a suspect, unless they believe that the suspect may escape or destroy evidence or in the case where a suspect is apprehended in the act, in which case a warrant must be issued within 48 hours of arrest. Prisoners arrested under the National Security Law may be interrogated for up to 50 days by the Agency for National Security Planning or the police and by the prosecution. Some prisoners have complained that they were subject to beatings and sleep deprivation during this period of interrogation, particularly in the early stages of interrogation by the police or Agency for National Security Planning.

Although the Constitution guarantees prisoners access to their lawyers, many lawyers defending political prisoners have complained that access is sometimes denied in practice. Lawyers frequently experience difficulties in gaining prompt access to their clients who are under interrogation by the Agency for National Security Planning and in some cases suspects may be held for the first 48 hours incommunicado before a warrant of arrest is issued. Once the prisoner has been transferred to a detention centre, access is sometimes denied for practical reasons. For example, meetings may be denied at certain times of the day, there may be no meeting room available and lawyers may only be permitted to meet one client at a time. Conversations between lawyers and their clients have sometimes been monitored.¹ Defence lawyers are not entitled to be present during the interrogation of a prisoner.

The Cases of Long-Term Political Prisoners

Amnesty International is concerned that many prisoners convicted under national security legislation do not appear to have received a fair trial. It has written to the authorities about the cases of some 25 long-term political prisoners, serving sentences of between seven years' and life imprisonment. Most of these prisoners were convicted of national security offences during the 1970s and 1980s under previous governments and sentenced to lengthy prison terms for alleged espionage activities after visiting North Korea, meeting members of a pro-North Korean group in Japan or failing to report visits from relatives from North Korea who made clandestine visits to the south. Amnesty International has repeatedly urged the authorities to review the cases of these prisoners because their convictions appear to rest on the prisoners' confessions and there is little other evidence to support the charges against them. In many cases the prisoners claim that they were held incommunicado, tortured during interrogation and denied access to lawyers and relatives. In February and September 1991 the South Korean Government responded to Amnesty International's letters of concern about some of the long-term prisoners held under the national security legislation. The response, however, failed to provide any information about the evidence used to convict the prisoners or about the allegations that some of them had been tortured and denied access to their lawyers and families.

Although the legal system prohibits the use as evidence of a confession obtained under torture it does not include any provision for a review of cases when there is reason to believe that such a violation has occurred. The grounds for re-opening a case under the Code of Criminal Procedure include the discovery

¹In January 1992 the Constitutional Court ruled that law enforcement officials should not monitor conversations between lawyers and their clients. Amnesty International welcomes this ruling and urges the authorities to ensure that it is implemented.
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of new evidence which is likely to alter the original decision but do not include the failure of the authorities to have conducted an adequate investigation into possible torture. In many cases of long-term prisoners convicted under national security legislation, particularly those convicted some years ago, it is extremely difficult to produce new evidence. Many of these prisoners allege that they were convicted on the basis of confessions made under torture and it is doubtful that any other evidence against them exists. Defence lawyers are unable to obtain access to prosecution documents which could reveal the basis for the original conviction. In these circumstances it is extremely difficult to obtain a retrial for long-term political prisoners, although there is serious concern that they were denied a fair trial.

The cases of some long-term political prisoners, many arrested under previous governments, whom Amnesty International believes may have been convicted after an unfair trial are described in the Amnesty International document *South Korea: Prisoners Held for National Security Offences (ASA 25/25/92)*. Some examples of these cases are briefly summarized below.

Shin Kui-yong was arrested in February 1980 and sentenced to 15 years' imprisonment for passing information to an alleged North Korean agent in Japan. His family say that he was held incommunicado for 70 days by an anti-communist intelligence unit and that he was tortured in order to force him to make a false confession. Lee Hon-chi was arrested in October 1981 and sentenced to death, later commuted to life imprisonment, for visiting North Korea and conducting espionage activities. He was reportedly denied access to a lawyer and to his family for over four months from the date of his arrest until his first trial in February 1982. He also alleges that he was forced to confess under torture. Ham Ju-myong was arrested in February 1983 and sentenced to life imprisonment for passing information to an alleged North Korean agent. He claims that he was severely tortured during his three months' interrogation, during which time he was denied access to his family. Amnesty International has repeatedly urged the South Korean authorities to review these cases and to conduct an independent investigation consistent with international standards into the claims that the prisoners were convicted on the basis of confessions made under torture. As far as it is aware, no such investigation or review has been carried out to date.

Kim Song-man, whom Amnesty International considers a prisoner of conscience, was arrested in 1985 and accused of conducting espionage activities on behalf of North Korea. He was sentenced to death after a trial which appears to have fallen short of international standards, but this sentence was later reduced to life imprisonment. Kim Song-man said that he had met North Koreans in order to learn more about North Korea and the possibilities for Korean reunification. He denied involvement in espionage activities and the only evidence to support the accusation is his confession which he claims he made under torture. In his appeal to the Supreme Court in August 1986, Kim Song-man wrote:

"I was interrogated and tortured mercilessly at the Agency for National Security Planning. During the interrogation and torture I was even forced to write a suicide letter addressed to my parents in order to disguise my possible death as a suicide. The press widely published my forced confession as though it was true."

The South Korean authorities have failed to respond to requests for an investigation into the claims that Kim Song-man was tortured and tried unfairly.

Another prisoner adopted by Amnesty International as a prisoner of conscience is Hwang Tae-kwon, who was arrested in June 1985 and is currently serving a 20-year prison sentence on charges of espionage.

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In a letter written from prison in 1988 Hwang Tae-kwon described his interrogation as follows:

". . . after 60 days of torture and beatings in the basement of the Agency for National Security planning and after three years of imprisonment for a crime I did not commit, having been silenced all those years, I hope my story will expose the crimes that were committed against me by the powers-that-be in order to extract my 'confession'. . .

"Ironically, the only document submitted to the court as conclusive evidence that I was a spy was drafted by myself and later revised by the interrogator in charge, then copied by myself, word by word. This is so-called conclusive evidence that a democratic court uses in a democratic country!"

To Amnesty International's knowledge, the authorities did not conduct an impartial investigation into the claims that Hwang Tae-kwon signed a false confession under torture, which was the main evidence used to convict him.

Despite the changes introduced in the new Constitution, which came into force in February 1988, Amnesty International has continued to document cases of unfair trial. One example is that of Suh Kyung-won who has been adopted by Amnesty International as a prisoner of conscience. Suh Kyung-won, a member of the National Assembly, is serving a ten-year prison sentence for making an unauthorized visit to North Korea in August 1988 and engaging in alleged spying activities. He was arrested on 28 June 1989 and interrogated for 24 days by the Agency for National Security Planning, during which time he was denied access to his lawyers. Suh Kyung-won alleges that he was beaten and deprived of sleep and that he was forced to make a false confession to prosecutors as a result of exhaustion. He denied the charges of espionage. According to press reports of the trial verdict, when delivering the court's verdict the judge dismissed Suh Kyung-won's claims that he made a false statement under duress and said that "overnight interrogation was inevitable because of the importance of the case". He admitted the confession as evidence on the grounds that Suh Kyung-won had been able to make corrections to parts of his confession to the prosecution authorities.

The Presumption of Innocence

A recent case of unfair trial, in which the presumption of innocence appears to have been disregarded, is that of Kang Ki-hun, a staff member of the dissident organization Chonminnyon (National Democratic Alliance of Korea). Kang Ki-hun was arrested in June 1991 and sentenced to three years' imprisonment for aiding and abetting the suicide of Kim Ki-sol, also a staff member of Chonminnyon, who committed self-immolation in May 1991. He was also convicted under the National Security Law for membership of an anti-state organization. Dissidents claimed that the police had fabricated a case against Kang Ki-hun in order to discredit the dissident movement.

Amnesty International is concerned that the court appears to have failed to accord Kang Ki-hun the presumption of innocence required under Article 14 of the ICCPR. The Human Rights Committee, a body of experts which monitors implementation of that treaty, has explained that the standard of proof required to overcome this presumption is very high:

"By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and

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the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt . . . It is . . . a duty for all public authorities to refrain from prejudging the outcome of a trial".

Amnesty International is concerned that the evidence in this case may not have produced conclusive proof of Kang Ki-hun's guilt. The main evidence consisted of a handwriting analysis carried out by the National Institute for Scientific Investigation (NISI) which supported the prosecution's charge that Kang Ki-hun wrote Kim Ki-sol's suicide note. The findings of the analysis were disputed by a Japanese graphology expert and doubt concerning its reliability was raised following allegations of corruption at the NISI. However, the evidence was accepted by the court and used to convict Kang Ki-hun. Shortly before the verdict was delivered, the judge told press reporters that "the court will have to approach the case for 'relative' truth rather than the whole truth for lack of objective evidence to prove claims of each side."

Amnesty International believes that the authorities should review the case of Kang Ki-hun and that he should be released unless there is sufficient evidence to convict him.

4) THE RIGHTS TO FREEDOM OF EXPRESSION AND ASSOCIATION

"Unconverted" Political Prisoners

Amnesty International is concerned about a number of prisoners of conscience, possible prisoners of conscience and other political prisoners, convicted under national security legislation, whose continued detention appears to be a result of their refusal to renounce their alleged communist views. These prisoners are known as "unconverted" political prisoners, over 40 of whom are held in Taejon Prison.

The "unconverted" political prisoners held in Taejon Prison are serving lengthy prison sentences for alleged espionage activities on behalf of North Korea, including many who have been sentenced to life imprisonment. At least 30 of these prisoners have already spent more than 20 years in prison, including ten who have been held for over 30 years and two have been in prison for over 40 years. Ordinary prisoners serving life-terms are generally released after serving between 16 and 18 years' imprisonment. While other prisoners can hope to be considered for early release by the Parole Examination Board, "unconverted" prisoners are kept outside this system, a factor which is particularly acute for those serving life terms.

Some of the prisoners who are required to "convert" may never have held communist beliefs or have been involved in espionage activities. Kim Song-man, who was arrested in 1985 and sentenced to life-imprisonment on charges of espionage, denied the charges against him and has argued that he should not have to "convert" because he was never involved in any spying activities. Amnesty International does not believe that there is any evidence to substantiate the charges against Kim Song-man. It has adopted him as a prisoner of conscience and is calling for his immediate and unconditional release. Amnesty International believes that the charges of espionage against some of the other "unconverted" political prisoners may also have been fabricated. They include Cho Sang-nok who was arrested in 1978 and sentenced to life imprisonment on spying charges. Cho Sang-nok alleges that he was tortured in an unidentified location for 17 days after his arrest and Amnesty International is concerned that he may have been convicted on

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the basis of a confession extracted under torture.

The basis for the "conversion" system is contained in a regulation issued by the Ministry of Justice in 1969. This regulation classifies prisoners (political and non-political prisoners) into four classes. Class A includes the prisoners who can be rehabilitated; Class B includes the prisoners whose rehabilitation is considered difficult; Class C includes prisoners whose rehabilitation is deemed very difficult, including recidivists and political prisoners who have "converted". Political prisoners who have not converted belong to Class D and are not entitled to the benefits granted to the other classes. According to testimonies of former political prisoners, in order to show that they had "converted" they were required to write a statement explaining (a) how they became communists, (b) the activities they carried out to promote communism, (c) the reasons why they wanted to give up communism, and (d) what they proposed to do in the future. The prisoners then appeared before a committee of prison officials who decided whether to accept the statement as evidence of a true "conversion".

Released political prisoners have testified that during the 1970s and 1980s many prisoners were tortured to force them to "convert". At present, however, the main pressure on prisoners is said to be a psychological one, including the denial of early release on parole. Prisoners who have not "converted" are also reportedly unable to receive and send regular correspondence, to meet visitors without guards being present, to have extra items of furniture in their cells, to work, watch television or to attend religious worship.

The National Security Law

The National Security Law (NSL) was first enacted in 1960 with the purpose to "control anti-state activities which endanger the national security, so that the safety of the State as well as the existence and freedoms of citizens may be secured" (Article 1). It was amended in December 1980 and in May 1991 but continues to be used to infringe the rights of freedom of expression and association. The law prescribes long sentences of imprisonment or the death penalty for anti-state activities and contacts with anti-state organizations. Over the years the law has been widely used to imprison people who visited North Korea without government authorization, people who met North Koreans or alleged North Korean agents abroad and people who expressed support for North Korea or whose views were similar to positions also taken by the North. In past years the courts have ruled that any information, even if it were publicly available, which could be useful to North Korea, qualified as a "state secret".

The South Korean Government describes the NSL as a "special law to cope with the special situation facing the Korean peninsula", but Amnesty International believes that the authorities have used this law to imprison people who disagreed with their own political views on the grounds that these people posed a threat to state security. The Human Rights Committee, in its general comment on Article 19 of the ICCPR, stated that "It is the interplay between the principle of freedom of expression and such limitations and restrictions [in practice] which determines the actual scope of the individual's right" and that "when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."

Amnesty International has adopted as prisoners of conscience some 30 people held under the NSL who

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it believes are held for their non-violent political activities and who cannot be deemed to pose a threat to state security. It is investigating the cases of some 60 other prisoners who it believes may be prisoners of conscience. It is also urging the authorities to further amend the National Security Law so that it cannot be used to imprison people solely for the peaceful expression of their political views.

The most important provisions of the NSL which have been applied to political prisoners are summarized below:

- Article 7 of the NSL punishes the act of benefiting North Korea by praising it, encouraging it and siding with it, or conspiring to commit such an offence. In May 1991 this article was amended so that the above offence will only be punishable when committed "with the knowledge that it will endanger national security and survival of the free and democratic basic order".
- Article 2 of the NSL defines an anti-state organization as a group within or outside the Republic of Korea which is organized for the purpose of assuming a title of government or disturbing the state (Organizations which have been defined as anti-state have included groups comprising dissidents, workers, students and political activists. The definition also includes the North Korean Government). In May 1991 the NSL was amended to permit contact with communist organizations or governments in other countries, with the exception of North Korea. The definition of anti-state organization was also altered to require that it be "equipped with a command and control system".
- Article 3 of the NSL forbids the formation of or participation in an anti-state organization.
- Article 4 of the NSL punishes acts of treason, espionage or sabotage under instructions from an anti-state organization. In May 1991 the law was amended to distinguish between cases where espionage involved "facts, objects or knowledge, access to which is allowed to a limited number of people only in order to prevent grave disadvantages" that their disclosure would "inflict on national security", and cases of espionage involving "lesser secrets".
- Article 6 of the NSL prohibits unauthorized travel to North Korea and re-entry into South Korea or preparing or conspiring to do so.
- Article 8 of the NSL forbids meeting, liaising or communicating with members of an anti-state organization. In May 1991 this article was amended so that the above offence is only punishable when committed "with the knowledge that it will endanger national security and survival of the free and democratic basic order".
- A new provision was incorporated into the NSL in May 1991 aimed at restricting its use. Article 1(2) states that "The interpretation and application of this law shall be confined to the minimum extent necessary to achieve its purpose. The law shall not be loosely interpreted or otherwise misapplied to unreasonably restrict the basic human rights of citizens."

In August 1990 the South-North Exchange and Cooperation Law came into force in South Korea. Under this new law the government can authorize its citizens, upon application, to visit North Korea, to

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invite North Koreans to visit the South and to trade and engage in joint ventures with them. Since August 1990 there have been an increased number of contacts between citizens of North and South Korea. However, the South Korean Government insists that it should be the main party to all negotiations about reunification with North Korea. It regards initiatives by private citizens or non-governmental organizations, particularly those critical of government policy, to have such discussions with the North as disruptive and liable to favour North Korea. It has therefore refused to grant authorization to people deemed to be dissidents to meet with North Koreans or to visit North Korea.

A number of prisoner cases which illustrate the misuse of the National Security Law are described in the following two Amnesty International documents: South Korea, Prisoners Held for National Security Offences (ASA 25/25/92) and South Korea, Arrests of Political Prisoners during 1991 (ASA 25/34/91). Some of these cases are briefly summarized below.

Five prisoners are serving prison sentences of between five and ten years for making unauthorized visits to North Korea in 1988 and 1989. They include student Im Su-kyong, who travelled to North Korea in 1989 to attend the 13th World Festival of Youth and Students, and clergyman Father Moon Kyu-hyun, who accompanied her back to South Korea at the armistice village of Panmunjom. Im Su-kyong's visit was well-publicised and was seen by many as a symbol of the Korean people's desire for reunification. In January 1991 the South Korean Government wrote to Amnesty International about the cases of Im Su-kyong and Father Moon Kyu-hyun. It sought to justify the use of the National Security Law in their case on the grounds of state security and said that "The problem [of reunification] cannot be resolved by an individual's attempts to make contact with North Korea, exclusive of the South Korean Government". Of Im Su-kyong, it said that "Her action should be understood to be the same as giving aid and comfort to the hostile country". Amnesty International believes that Im Su-kyong and Father Moon Hyu-kyun were imprisoned in violation of their rights to freedom of expression and association. It does not believe that the mere act of travelling to North Korea, without the use or advocacy of violence or evidence of espionage activities, justifies arrest and imprisonment.

Two other prisoners, Reverend Moon Ik-hwan and businessman Yu Won-ho, are serving prison terms for making an unauthorized visit to North Korea in 1989. At his trial Yu Won-ho said he went to North Korea to advance reunification. When delivering judgement, the trial judge accepted that the visit had been motivated by the mens' commitment to reunification but said that they had fallen victim to a North Korean propaganda ploy and had harmed the interests of the South. Amnesty International believes that these prisoners visited North Korea openly and with a genuine desire to achieve peaceful reunification. There is no evidence of any involvement in espionage activities. It has urged the South Korean authorities to release them immediately and unconditionally.

Three members of an artists' group were arrested in March 1991 and given prison sentences of between 18 months and two years. Chong Son-hee, Choi Ik-kyun and Oh Chin-hee belong to Somiryon, which is affiliated to the National Minjung Arts Movement (Minmiryon). These artists' groups aim to practice and promote realism in art. Their members' works depict scenes of the lives of ordinary or working people and often contain political messages, in particular in support of Korean reunification. They also campaign for freedom of artistic expression. The three prisoners were convicted of various activities on behalf of Somiryon, such as organizing and attending meetings about North Korean art, painting a banner on the theme of Korean reunification, participating in art exhibitions featuring the works of Somiryon members and receiving and keeping various art publications. Another artist, Hong Song-dam, was arrested in 1989

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and has served a three-year prison sentence for sending a photographic slide of a mural entitled History of the National Liberation Movement to North Korea, where it was reproduced and exhibited. Once again, Amnesty International believes that these artists were imprisoned for the peaceful expression of their political views. It does not believe that such activities can reasonably be deemed a threat to the security of the state.

Between November 1990 and August 1991, 12 members of Pomminnyon (Pan-national Alliance for the Reunification of Korea) were arrested and charged under the National Security Law for unauthorized contact with North Koreans and for membership of an anti-state organization. Pomminnyon was inaugurated in November 1990 and declared its aims to be the achievement of peaceful national reunification, independence and national unity. The prisoners included Cho Song-woo and Lee Hae-hak, who are serving 18-month prison sentences for attending a Pomminnyon meeting in Japan where they met North Koreans and discussed the issue of reunification. The men had applied for permission to meet North Koreans under the terms of the South-North Exchange and Cooperation Law, but this had been denied. Another member, Reverend Hong Keun-soo, was arrested in February 1991 and sentenced to two years' imprisonment for membership of Pomminnyon, for praising North Korea in his sermons and for speaking in favour of reunification during a television debate on Korea Broadcasting System in September 1988. Amnesty International has adopted the three men as prisoners of conscience, held in violation of their rights to freedom of expression and association. It does not believe that their peaceful attempts to meet with North Koreans and discuss reunification can be considered a threat to state security.

Prosecutions continued after the amendment of the National Security Law in May 1991. In June 1991 four research students belonging to Seoul Social Science Institute were arrested for possessing and publishing pro-North Korean books. These publications are said to have supported a theory of neo-colonial, national, monopolistic capitalism and to have thereby agreed with the policies of North Korea. The arrests provoked much criticism in academic circles as some of the articles in question formed part of the students' theses and had already been submitted to Seoul National University for examination. Some copies of the published articles were still widely available in university bookshops after the students had been arrested. Amnesty International adopted Shin Hyon-jun, Kwon Hyon-jong, Lee Chang-hui and Song Ju-myong as prisoners of conscience, held for the non-violent exercise of their right to freedom of expression. The four men were given suspended prison sentences in December 1991 and released.

Amnesty International is also concerned that freedom of expression has been curtailed in the military. It is seeking further information about some 20 army conscripts who were convicted under the National Security Law. They include Chin Song-jun who was arrested in July 1990 and sentenced to three years' imprisonment for publishing a newsletter protesting about the beating of army conscripts. Another prisoner, Chong Kwang-min, was arrested in June 1989 and sentenced to four years' imprisonment for making an anti-government declaration of conscience which included demands for further investigation into the massacre in Kwangju in May 1980, an end to military autocracy and a greater effort by the government to achieve unification with North Korea.

The Social Surveillance Law

The Social Surveillance Law was enacted in 1989. Article One defines the purpose of the Law as follows:

"The purpose of this Act is to take security observation measures upon such persons who have committed specific crimes in order to prevent the danger of their recommitting crime and promote their return to normal sound social life, and thereby to maintain national security and social peace."

Under the terms of this law certain released political prisoners are required to report on a three-monthly basis to their local police station, giving details of their political activities, meetings, trips and other matters as deemed appropriate by the police station chief. Former prisoners who are subject to this law may also be prevented from associating with each other or from taking part in certain meetings or demonstrations at the discretion of the public prosecutor or local police station. The South Korean Government has told Amnesty International that some 300 former prisoners are subject to this law. Those who violate the law face prison terms of up to three years.

To date, Suh Jun-shik is the only person to have been charged with violation of the Social Surveillance Law. Suh Jun-shik was imprisoned in 1971 for alleged espionage activities and when his sentence expired in 1978 he remained in detention under the Public Security Law until his release in 1988 because he refused to "convert to anti-communism". After his release, in 1988, Suh Jun-shik was required to report under the terms of the Social Surveillance Law. He was re-arrested in June 1991 on several charges, including a charge under the Social Surveillance Law for failure to make a regular report of his activities. Amnesty International adopted Suh Jun-shik as a prisoner of conscience during his imprisonment from 1971 to 1988 and considered the charges under the Social Surveillance Law to be a violation of his rights to freedom of expression and association. In December 1991 Suh Jun-shik was sentenced to one year's imprisonment, suspended for two years, and released.

The Labour Dispute Mediation Act

Article 13(2) of the Labour Dispute Mediation Act prohibits a third party - that is somebody who has no immediate connection with a workplace where a dispute is taking place - from intervening in the dispute. The authorities regard as third party intervention the distribution of leaflets and other documents giving advice to trade union members about their labour rights and about the conduct of wage negotiations. Amnesty International is concerned that Article 13(2) has been used to imprison trade unionists for giving advice about peaceful and legitimate trade union activities.

A number of trade unionists are currently held under this legislation. They include Kim Yong-dae, acting President of Chonnohyop (Korea Trade Union Congress), who was arrested in December 1990 and sentenced to 18 months' imprisonment under the Law on Assemblies and Demonstrations and Article 13(2) of the Labour Dispute Mediation Act. Kim Yong-dae was accused of giving advice to trade union affiliates about wage negotiations and of inciting strikes. Amnesty International expressed concern to the South Korean authorities that he may have been detained for his peaceful trade union activities.

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Amnesty International also expressed concern about the arrests in February 1991 of seven trade union leaders belonging to the Association of Large Factory Trade Unions on charges of third party intervention. The men were arrested as they left a meeting which had discussed plans for wage negotiations and solidarity with workers at the Daewoo Shipbuilding and Heavy Machinery Company who had gone on strike the previous day. Four were later sentenced to prison terms ranging from one to one-and-a-half years' imprisonment.

The Law on Assemblies and Demonstrations

The Law on Assemblies and Demonstrations authorizes anti-government demonstrations so long as public order and security are protected. Under the law, permission for a demonstration must be obtained from the police at least 48 hours beforehand. Permission to hold a demonstration may be denied if it is considered a direct threat to the public peace.

Amnesty International's concern about this law stems from the fact that trade unionists and dissidents have been imprisoned for holding demonstrations without a permit even though some organizations claim to have experienced difficulties in obtaining the required permission from the police or to have had such permission arbitrarily refused. Some trade union and dissident groups, including Chonnohyop (Korea Trade Union Congress) have told Amnesty International that their applications are irrelevant because they are usually denied permission to hold demonstrations on the grounds that they may disrupt public order. Although some anti-government demonstrations result in violence, many are peaceful and Amnesty International is concerned that the authorities may use this law to imprison members of dissident and trade union groups for exercising their right to peaceful assembly.

In some cases the law appears to have been used to curtail the activities of dissident leaders. Kim Keun-tae, a leading dissident and co-chairperson of Chonminnyon (National Democratic Alliance of Korea), was arrested in May 1990 and charged under the National Security Law with making anti-government statements at a number of public meetings. He was also charged under the Law on Assemblies and Demonstrations for organizing five demonstrations without informing the police in advance. Two of these demonstrations took place over one year before his arrest and Kim Keun-tae was the only leader of Chonminnyon prosecuted for organizing these demonstrations.

Several teachers have also been imprisoned for exercising their right to peaceful freedom of assembly. The Civil Service Law prohibits teachers in state-run schools from establishing or joining unions and similar restrictions apply to teachers in private schools under the Private School Law. When it ratified the ICCPR in April 1990, the government made a reservation to Article 22, which guarantees the right to form and join trade unions.

Chunkyojo (Korean Teachers' and Educational Workers' Union) was inaugurated in May 1989 and immediately declared to be illegal by the authorities. It has declared its aims to be the realization of a "nationalistic, democratic and humane" education, including broad educational reforms and the recognition of teachers' rights to form a union. Chunkyojo reportedly has around 15,000 members, most of whom have joined the organization secretly. Since 1989 some 1,500 teachers have been dismissed from their posts because of their membership of the union.

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Because Chunkyojo is regarded as illegal it rarely receives police permission to hold demonstrations. Since the union's inauguration in May 1989 several thousand teachers are reported to have been briefly detained for taking part in demonstrations and rallies in support of the union's aims and of these over 100 have been tried and sentenced. Most received suspended prison sentences and were released but some were sentenced to prison terms and were adopted by Amnesty International as prisoners of conscience. They included the union's president, Yoon Young-kyu, who was arrested in June 1989 and sentenced to one year's imprisonment under the Law on Assemblies and Demonstrations and the Civil Service Law. They also include another union official, Lee Pu-yong, who was arrested in June 1991 and charged under the Law on Assemblies and Demonstrations with holding an unauthorized rally in May 1990 while he was acting President of Chunkyojo. The rally, held to celebrate the union's first anniversary, was reported to have been peaceful.

5) THE RIGHT TO LIFE

The Death Penalty

Amnesty International believes that the death penalty is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. It is also a violation of the right to "human worth and dignity", guaranteed in the Constitution of the Republic of Korea.

The South Korean Government has stated its commitment to reduce the number of crimes which are subject to the death penalty ". . . in consideration of the spirit of the Constitution to respect human dignity and worth, and the international trend towards the abolition of the death penalty". Amnesty International, however, is concerned at the trend over the past few years towards increased use of the death penalty in South Korea. In October 1991 the Supreme Court released statistics showing that the number of death sentences imposed by the courts had risen from 17 in 1989 to 36 in 1990. At the end of 1991, some 30 people were reported to be under sentence of death. The rise was said to have resulted from an "anti-crime" campaign launched by the government in October 1990. According to information received by Amnesty International, there were no executions between June 1987 and August 1989, but some 25 have been carried out since then. The most recent executions known to have been carried out were in December 1991 when the victims were nine people who had been convicted of murder.

The death penalty can be imposed in South Korea for a variety of criminal and political offences under the Criminal Code and other laws. Crimes punishable under the National Security Law include espionage and leadership of an anti-state organization. However, in practice most death sentences in recent years have been imposed for murder or for murder or rape in the course of robbery. The last known executions for political offences were in 1982 and there are currently no political prisoners under sentence of death.

In 1989 a petition was filed with the Constitutional Court on the grounds that the death penalty violates Articles 10 and 12 of the Constitution. Article 10 guarantees "human worth and dignity and the right to pursue happiness" and Article 12 guarantees personal liberty. At the time of writing the outcome of this petition was not known to Amnesty International.

6) AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International believes that the following steps should be taken by the South Korean authorities to end current human rights violations:

The Prohibition of Torture and Ill-Treatment

- Anybody who is arrested should be brought promptly before a judge and should be granted immediate and subsequent regular access to lawyers and relatives and independent medical attention.
- There should be a clear division between the authorities responsible for interrogation and those responsible for detention of suspects.
- The government should ensure that all law enforcement personnel receive adequate training in both domestic and international human rights standards.
- The government should demonstrate its commitment to the eradication of torture and ill-treatment by ratifying the UN Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment without any reservations and by making declarations under Articles 21 and 22 recognizing the competence of the Committee against Torture to receive communications from states parties and individuals about alleged violations of the Convention.

The Investigation of Allegations of Torture and Ill-Treatment

- All reports of torture or ill-treatment should be promptly investigated by an impartial and independent body which should have the power to obtain all information necessary for the inquiry and to compel those accused of torture to appear and testify.
- The absence of an official complaint by the victim or relatives should not deter investigation.
- The results of all inquiries should be made public and should include a full report of the inquiry's findings, conclusions and recommendations.
- All those found to be responsible for inflicting torture should be brought to justice.
- All victims of torture should receive fair and adequate compensation and as full a rehabilitation as possible.

The Right to a Fair Trial

- All those charged with a criminal offence should be presumed innocent until proved guilty beyond
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reasonable doubt.

- The government should ensure that statements obtained from prisoners as a result of torture are not admissible in legal proceedings.
- Prisoners who were convicted on the basis of coerced confessions should have their convictions promptly reviewed.
- In cases where prisoners complain that their confessions were extracted under torture, the burden should be on the detaining and interrogating authorities to prove that the confession was voluntary and that torture and ill-treatment did not occur.

The Rights to Freedom of Expression, Assembly and Association

- Nobody should be imprisoned for the non-violent exercise of their rights to freedom of expression and association. Those imprisoned in violation of these rights should be immediately and unconditionally released.
- Nobody should be imprisoned for exercising their rights to peaceful demonstration and association, including the right to form or join a trade union. Those imprisoned in violation of these rights should be immediately and unconditionally released.
- Relevant provisions of the National Security Law, the Labour Dispute Mediation Act, the Law on Assemblies and Demonstrations and the Social Surveillance Law should be amended to bring them fully into line with international standards relating to freedom of expression and association.

The Right To Life

- The government should abolish the death penalty and commute all death sentences.
- The government should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.