REPUBLIC OF KOREA (SOUTH KOREA)

International Standards, Law and Practice: The Need for Human Rights Reform

I) INTRODUCTION

1) Document summary

This report is about the need for human rights reform in the Republic of Korea (South Korea). It examines a number of fundamental human rights, enshrined in international human rights standards, in relation to domestic law and practice in South Korea. Chapter II examines the rights to freedom of expression and association in relation to the use of the National Security Law. Chapter III looks at the need for practical steps to safeguard the rights of detainees and to protect them from torture and ill-treatment during interrogation. Chapter IV discusses the lack of an effective remedy for the victims of human rights violations and Chapter V makes a series of recommendations.

This report concludes that there is an urgent need for human rights reform in South Korea. The National Security Law must be amended so that it may no longer be used to detain people for the non-violent exercise of their rights to freedom of expression and association. Although torture and ill-treatment are prohibited under South Korean law, such practices continue because of inadequate safeguards to protect detainees. The victims of human rights violations have very little chance of obtaining redress.

The information in this report has been gathered by Amnesty International over a number years from a variety of sources. These include reports and discussions with human rights groups, lawyers, former prisoners, families of prisoners, academics, journalists and others in South Korea. The report also takes account of discussions and written communications between Amnesty International and representatives of the South Korean Government.

2) A summary of the human rights situation in South Korea

Freedom of expression, association and opinion are curtailed by the use of the National Security Law to arrest and imprison people for the non-violent exercise of their fundamental human rights. The law

contains vaguely defined provisions which have been used arbitrarily to imprison people who had unauthorized contacts with the Democratic People's Republic of Korea (DPRK, North Korea) and whose ideas were similar to those of the North Korean Government. At the time of writing some 300 people were held under the National Security Law, many as prisoners of conscience.[1] They include 75 prisoners who have been in prison for over seven years, many of whom were convicted unfairly under past governments.

Provisions of labour legislation also restrict the rights to freedom of expression and association. The prohibition on "third party intervention" in labour disputes means that trade union leaders face arrest and imprisonment for giving advice and support to other trade unions. The authorities regard as "third party intervention" advice given to trade union members about their labour rights. In practice it renders many ordinary trade union activities illegal.

To some observers, torture and ill-treatment may appear to have been eradicated since methods such as electric shock and water torture appear to be no longer used. In practice, however, torture and ill-treatment continue. Agencies responsible for interrogation of suspects use methods such as sleep deprivation, threats and intimidation and sometimes resort to beatings. The use of sleep deprivation in particular appears to have become an acceptable form of treatment and is routinely used to extract "confessions" from political suspects. There is ample time to extract such a confession - interrogation before charge can last for up to 50 days in National Security Law cases.

Although South Korean law protects the rights of prisoners and provides redress for the victims of human rights violations, practical safeguards are insufficient. Political prisoners are not always told of their rights at the time of arrest, are not always granted adequate access to their relatives and lawyers and often appear to have been presumed guilty before they have been tried. Coerced confessions are used in court and the authorities do not appear to investigate reports of human rights violations unless a formal complaint is made, even when there are clear indications that human rights violations took place. Even if such a complaint is made, the investigation is not carried out by an independent body and the prosecution often decides not to bring charges against officials.

The death penalty is provided for a variety of offences under South Korean law, including political offences. In current practice it is handed down for murder. Executions are carried out sporadically (there were 15 executions in 1994, all carried out on one day).

1 Amnesty International defines prisoners of conscience as people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language - who have not used or advocated violence.

3) Summary of procedur
es for arrest, interrogation, trial and imprisonment

Under South Korean law suspects may be held for interrogation for up to 30 days before they are charged and for those arrested under provisions of the National Security Law this period may be extended to 50 days. Ordinary prisoners and some political prisoners are held in police stations for the initial period of interrogation and are transferred to a detention centre or prison when the prosecution authorities take over the interrogation. Some political prisoners are initially held and interrogated by the Agency for National Security Planning (ANSP).

Once a prisoner has been charged s/he should be tried and sentenced by the court of first instance within six months of his/her arrest. Trial is by judge and sometimes by a panel of judges. There are often several separate trial hearings and a trial may therefore take place over several months. Once a sentence has been handed down prisoners may lodge an appeal for the sentence to be reduced. Some prisoners make a final appeal to the Supreme Court, after which the sentence is considered to be final.

The highest court in South Korea is the Supreme Court which acts as a final court of appeal in civil and criminal cases. There are five High Courts, situated in Seoul, Taegu, Pusan, Kwangju and Taejon, which act as courts of first appeal. All major cities have district courts which exercise jurisdiction over civil and criminal cases in the first instance. Once a sentence has been finalized, most prisoners must serve the full sentence they have been given by the court. However, a small number of prisoners may be released on parole after they have served two-thirds of their sentence or after 16 to 18 years in the case of life sentences. Some political prisoners, generally those convicted of "espionage", are put under pressure by prison authorities to renounce their alleged communist views (this process is known as "conversion"). Those who refuse, known as the "unconverted" prisoners, are generally denied the chance of early release on parole.

Political prisoners are generally held in the same prison until their sentence has been finalized. Then they are generally moved to a different prison, often some distance from their family, and may be moved to several different prisons during their imprisonment. Conditions vary from prison to prison and some prisons are known to be harsher than others. Most convicted political prisoners are entitled to one or two family visits each month and some are also allowed to have friends visit them. Political prisoners are generally allowed to read newspapers and books - subject to censorship - and to receive packages from the outside. Some prisoners are allowed to receive letters and parcels from abroad, but in many cases this is denied. Those who refuse to "convert" generally receive the least amount of privileges. Almost all political prisoners are held in single cells and are allowed little contact with other political prisoners.

Some "unconverted" political prisoners are completely isolated from other prisoners.

4) Brief background information about South Korea

The Republic of Korea (South Korea) and the Democratic People's Republic of Korea (North Korea) have been two separate countries since the end of the World War II (1945). The Korean peninsula, hitherto a Japanese colony, was then divided along Soviet and United States occupation lines, north and south of the 38th parallel. In 1950 the Korean War broke out. It ended in 1953 with an armistice agreement. To this day there is no formal peace treaty between North and South Korea and the two countries are technically still at war. The demilitarized zone separating the two countries is one of the most heavily fortified in the world and since 1953 there has been constant tension between the two countries.

Since the end of the Korean War hundreds of thousands of families have been cut off completely from each other. There is no mail or telephone communication between ordinary citizens of the two countries. South Koreans receive little independent information about North Korea and they are unable to visit North Korea or to meet North Koreans in third countries without seeking prior authorization from the government. Failure to comply has resulted in heavy prison terms under the National Security Law. In recent years the governments of North and South Korea have held talks aimed at eventual reunification but little progress has been made.

South Korea, with a population of 44 million, has developed a capitalist economy and achieved remarkable economic success in recent years, becoming the world's 12th largest trading nation. Despite the political tensions inter-Korean trade continued to grow during the first half of 1995. South Korea has close contacts with the USA which maintains military bases in the country and in recent years it has successfully obtained economic and political contacts with many former communist countries. In 1992 it established diplomatic relations with the People's Republic of China. In 1995 the South Korean Government adopted the term "globalization" to describe its policy of achieving enhanced political and economic links with the international community.

In 1991 South Korea became a full member of the United Nations (until then it had had observer status) and the International Labour Organization (ILO). It has become a party to a number of international treaties and covenants including the International Covenant on Civil and Political Rights (1990), the International Covenant on Economic, Social and Cultural Rights (1990), the Convention relating to the Status of Refugees (1992) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1995).

Executive power in South Korea is vested in the President, elected every five years, and his cabinet. Legislative power is vested in the National Assembly whose deputies are elected every four years. In recent years the political scene has been dominated by the two main political parties: the Democratic Liberal Party (DLP), the ruling party, and the Democratic Party (DP), until recently the main opposition party. In 1995 political divisions in both parties led to the creation of two new opposition parties - the United Liberal Democrats (led by former DLP Chairman Kim Jong-pil) and the National Congress for New Politics (led by former DP leader and presidential candidate Kim Dae-jung).

South Korea has a written Constitution, last amended in 1988, which guarantees freedom of press, speech, association and assembly, among other rights. Under authoritarian governments, until the late 1980s, human rights violations were very widespread. Thousands of political activists were imprisoned in the 1980s and torture was commonplace. Democratic elections in 1988 brought about a more liberal climate and large numbers of political prisoners were released. In the presidential election of 1992 President Kim Young-sam became the country's first President without a military background for over three decades. He took office promising freedom, democracy and improved human rights.

II) THE NATIONAL SECURITY LAW AND THE RIGHTS TO FREEDOM OF EXPRESSION AND ASSOCIATION

1) Introduction to the law and its use

International Covenant on Civil and Political Rights

Art 19 1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order or of public health or morals.

Constitution of the Republic of Korea

Art 6(1) Treaties duly concluded and promulgated in accordance with the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.
Art 19All citizens shall enjoy freedom of conscience.
Art 20(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.
Art 21(1) Licensing or censorship of speech and the press, and licensing of assembly and association
shall not be recognized.
Art 37(1)Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution.
Art 27(1) All citizens shall have the right to be tried in conformity with the law by judges qualified under the Constitution and the law.

The National Security Law was first introduced in 1948 and has been amended seven times since then. The last amendment, in 1991, did not introduce significant changes to the law. Over the years, the

National Security Law has been used widely to imprison people who visited the Democratic People's Republic of Korea (DPRK, North Korea) without government authorization, people who met North Koreans abroad and people who expressed support for North Korea or who had expressed similar ideas to those of the North Korean Government. Many of these prisoners were exercising their rights to freedom of expression and association, without use or advocacy of violence.

The revision of the National Security Law in 1991 was prompted by a decision of the Constitutional Court that, although the law was not unconstitutional, some of its provisions under Article 7 were too ambiguous and open to abuse for political purposes. Amnesty International is concerned that offences under the National Security Law remain vaguely defined, leading to arbitrariness in their application and to people facing punishment without being aware that they have committed an offence.

Although the Constitution of the Republic of Korea guarantees "freedom of speech and the press", it contains no provision that expressly guarantees the right of freedom of expression. During a discussion on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in South Korea in July 1992 South Korean Government officials sought to reassure the United Nations Human Rights Committee that freedom of expression was indirectly guaranteed under Article 37 of the Constitution. They stated unequivocally that Article 37 *"covered all rights enshrined in the Covenant except those in respect of which the Government had entered reservations"*.[2] South Korean Government officials also confirmed that where there was no provision in South Korean law that corresponded to a provision in the ICCPR, the provisions of the Covenant could be directly invoked by the courts.

As of 10 June 1995 there were 464 people in prison in South Korea for political offences, some 300 of whom were held under the National Security Law. They included 75 prisoners held under the National Security Law or the Anti-Communist Law (abolished in 1980) who have been held for longer than seven years (described in this report as "long-term" prisoners). There were 388 arrests under the National Security Law in 1994 and 117 during the first five months of 1995. From February 1993 (the beginning of President Kim Young-sam's term of office) and 10 June 1995 a total of 610 people had been arrested under the National Security Law.[3]

Problems with the use of the National Security Law are compounded by a system which facilitates long interrogation, and ill-treatment after arrest. National Security Law suspects may be held for up to 50 days before charge during which time they are routinely deprived of sleep, threatened, intimidated and sometimes beaten. Many suspects report having been coerced into signing a "confession" which was later used as evidence to support their conviction. This issue will be discussed in more detail in the subject of Chapter III of this report.

The majority of prisoners arrested in the past few years were given short prison terms of up to two years' imprisonment. Many were released with a suspended prison sentence. After indictment prisoners are tried and sentenced within six months of their arrest. Even those prisoners who are released with suspended prison sentences have spent six months in prison. They face further restrictions upon release (such as ineligibility to hold office or vote in elections) and have difficulty obtaining employment because of their criminal conviction.

2Summary Record of Human Rights Committee 45th Session (ref: ICCPR/C/SR.1154).

3The figures in this paragraph are unofficial, provided by Minkahyop human rights group.

2) Provisions of the National Security Law which may lead to human rights violations

2.1) Punishment for belonging to an "anti-state" organization

Central to several offences under the National Security Law is the definition of an "anti-state" organization. Article 2 defines it as *"an association or group within the territory of the Republic of Korea or outside of it, which has a structure of command and control, organized for the purpose of assuming a title of the government or disturbing the State"*. Before the 1991 revision of the National Security Law, there was no requirement for an organisation or group to have a "structure of command and control" in order to be deemed "anti-state". The new definition remains vague. In many cases the courts do not appear to have disputed the prosecution authorities' characterization of an organization as "anti-state".

Members of "anti-state" organizations face severe penalties on conviction. Under Article 3, leaders and organisers face the death penalty or a minimum of five years' imprisonment. Other members face a minimum of two years' imprisonment. Under Article 7 those who "praise" or "encourage" or "side with" the activities of an "anti-state" organization may be imprisoned for up to seven years. Many organizations labelled as "anti-state" are left-wing political groups whose members had not used or advocated violence. Under the National Security Law, the Government of North Korea is considered to be an "anti-state" organization. This means that, for example, a person who has similar ideas to those of the North Korean Government might be accused of supporting that government through publication and dissemination of these ideas.

Since 1990 members of *Sanomaeng* (Socialist Workers League) have faced arrest and imprisonment as prisoners of conscience for membership of an "anti-state" organization. The South Korean authorities claim that this group had attempted to overthrow the government but Amnesty International believes there is no evidence that the individuals concerned had instigated a violent plot to overthrow the government. One of the organization's leaders, Baik Tae-ung, clearly stated during his trial that the group had sought to achieve political representation through peaceful methods and had only operated as an underground movement in order to avoid arrest and imprisonment.

An example of imprisonment for contacting members of an "anti-state" organization is that of Kim Sam-sok and his sister Kim Un-ju. They were arrested in September 1993 and accused of meeting members of an "anti-state" organization in Japan. This organization, *Hantongnyon,* is a group of Korean residents in Japan working on human rights and democracy issues. It acquired its "anti-state" label in the 1970s when it was a vocal opponent of the military dictatorship in South Korea, and is still considered an "anti-state" organization although its activities appear to be non-violent and legitimate. In any event, the mere fact of meeting people belonging to an organization labelled as "anti-state" should not in itself constitute a criminal offence. Kim Sam-sok was sentenced to four years' imprisonment. Kim Un-ju was given a suspended sentence and released.

2.2) Severe penalties for "espionage" and transmitting "state secrets"

If members of an "anti-state" organization or others acting under its instructions commit certain criminal offences, Article 4 imposes on them heavy penalties. Acts of espionage and the detection, collection and transmission of "state secrets" are punished differently depending on whether the military or "state secrets" are actually classified as secrets, knowledge of which is restricted, and where secrecy from an enemy state and an "anti-state" organization is necessary to protect the security of the state. The penalty for transmitting such secrets is death or life imprisonment. The transmission of "state secrets" that do not fall into the above category is punishable by death or imprisonment for a minimum of seven years.

The term "state secret" has been widely interpreted by the prosecution and the courts and it is sometimes difficult for anybody to know what constitutes a "state secret". In some cases information already in the public domain was considered by the courts to be a "state secret" and this interpretation has led to people being imprisoned for passing to others information which was widely available in South Korea, in violation of their rights to freedom of expression and association.

According to the established ruling of the Supreme Court, "state secrets" have included information which is publicly available. The Court defined "state secrets" as: *"all information and intelligence material that is deemed necessary to keep secret from, or not confirmed to, an anti-state organization for the interest of South Korea. Therefore it refers to not only state secrets in the strict sense of the term, but also all secret matters in all fields of politics, economy, society, culture, and so forth. Furthermore, even though information is evident and common-sense knowledge within South Korea, it shall still be regarded as state secret when it may provide benefit to an anti-state organization and cause damage to us."*[4]

In September 1993 Kim Un-ju was charged with passing "state secrets" to members of an "anti-state" group in Japan. These "state secrets" were items such as *Mal* monthly magazine and *Hankyoreh* daily newspaper. Kim Un-ju was given a suspended prison sentence and released in February 1994. At her appeal hearing in October 1994 the Supreme Court ruled that the items she gave to people in Japan could not be considered as "state secrets" under the National Security Law.

However, in May 1994 the Supreme Court made what appeared to be a contradictory ruling on the case of Hwang Suk-yong who had been arrested in 1993 on charges of making an unauthorized visit to North Korea and passing "state secrets" to North Korean officials. The information he is said to have given included the contents of his conversations about the political situation in South Korea and magazines published in South Korea. In his case the Supreme Court ruling reiterated that any information which might benefit an "anti-state" organization (including North Korea) was a "state secret", even if it was publicly available in South Korea. The case of Hwang Suk-yong was considered by the United Nations Working Group on Arbitrary Detention which, in September 1994, declared his imprisonment to be "arbitrary, being in contravention of Article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a party".

Im Su-kyong, arrested in 1989 after she had made an unauthorized visit to North Korea was convicted of passing "state secrets" to North Korea. This included the contents of her conversations about student life

4Supreme Court decision on case of Rev. Moon Ik-hwan, 8 June 1990.

in South Korea, including the difficulties of paying for tuition and finding graduate employment. This was clearly public information.

Chang Ui-gyun, arrested in 1987, was charged with passing "state secrets" to an alleged North Korean supporter in Japan. The information he had given included descriptions of political rallies, including a rally in Inchon on 3 May 1986 which erupted in violence, and information on the setting up of the National Council for a Democratic Constitution which organized mass demonstrations in support of a revision of the presidential election system in June 1987. There was no indication that any of this information constituted a national secret and Chang Ui-kyun appeared to have been arrested for his political views and activities." In April 1993 the United Nations Working Group on Arbitrary Detention said "*There is no evidence on record to support the charges of espionage against Chang Ui-gyun. The evidence irresistibly suggests that Chang Ui-gyun was arrested for his political views and activities, in contravention of Articles 19 and 21 of the Universal Declaration of Human Rights, and Articles 19 and 21 of the International Covenant on Civil and Political Rights."*

2.3) Penalties for receiving money from an "anti-state" organization

For any person to receive "money or materials" from an "anti-state organisation" is a separate offence under Article 5 of the National Security Law. Article 5(2) was amended in 1991 to make the act an offence only when a person receives money "with the knowledge that he might endanger the existence and security of the state or the basic order of free democracy".

This charge often accompanies a more serious charge of "espionage". Amnesty International believes that, in the absence of evidence that the money was used for espionage, receipt of such money can be legitimate. For example, in 1993, writer Hwang Suk-yong was charged with receiving money from the North Korean Government as an "operational" fee for espionage purposes, whereas this money was a copyright fee for permission to make a film of his book *Jankilsan*. In 1994 Kim Sam-sok was charged with receiving money from an alleged "anti-state" organization in Japan as a fee for collecting and reporting military information. He had claimed the money was a gift and there was no credible evidence that he had collected and passed on any classified information.

2.4) Punishment for failure to inform the authorities about someone who has violated provisions of Articles 3, 4 and 5

The scope of this offence was reduced by the 1991 revision of the National Security Law. While previously it was an offence not to inform on violations of Articles 3 through to 9, now the obligation is limited to three provisions of the law relating to "anti-state" organizations.

This has been used to imprison people for the peaceful exercise of their rights to freedom of expression and association. For example, in January 1993 Cho Mu-ha was given a one-and-a-half year suspended

prison sentence for failing to report a violation of the National Security Law by her husband Chang Ki-pyo, who was imprisoned for the peaceful exercise of his rights to freedom of expression and association.

2.5) Prohibition on meeting and communicating with an "anti-state" organization

Article 8 of the National Security Law makes it an offence for a person (who need not be a member of an "anti-state" organization) to establish contact, by meeting or other means of communication, with a member of an "anti-state" organization or a person under instructions from such an organization. The penalty is a maximum of ten years' imprisonment.

The 1991 amendment to the National Security Law introduced as a requirement for the commission of this offence that the person had "the knowledge that he might endanger the existence, security of the state or the basic order of free democracy". Previously the law required that the person had the "knowledge that he might aid an 'anti-state organization' ".

This provision has been used against people who sought to contact or contacted North Koreans or members of "anti-state" organizations, sometimes without there being an additional charge of "espionage". In effect this means that any person who visits North Korea, meets a North Korean abroad, or who meets a member of an organization labelled as "anti-state", either in South Korea or in another country, may be punished under this provision. The stipulation that the person must have "the knowledge that he might endanger the existence, security of the state or the basic order of free democracy" is vague and the onus is generally placed on the defendant to prove that he or she did not act with this "knowledge".

In some cases people were unaware that they had met a member of an "anti-state" organization. Chang Ki-pyo, arrested in September 1992 when he was working for the *Minjung* (People's) political party, was charged with meeting an alleged North Korean agent who visited the office of the *Minjung* party and donated a photocopier. This person had appeared to be a party supporter and there is no reason why he should have suspected her of being an agent. South Koreans who visit Japan and meet members of Korean organizations in that country carry the same risk. Kim Un-ju, arrested in September 1993, was given a suspended prison sentence for meeting a member of an "anti-state" organization in Japan, even though the charges that she had given "state secrets" to the organization in question were dropped.

One of the charges against Ahn Young-min, arrested in November 1994, was that he had joined an "anti-state" organization and held meetings with a member of an anti-state organization - his own father. Ahn Young-min denied that he had joined an organization formed by his father and commented that it was natural that he should meet his father sometimes. At this trial he said *"Our conversations were mainly about what was going to happen to me, and about the health and general state of each family member. We discussed the same subjects as any normal father and son. So, if such conversations are regarded as assemblies, all the fathers and sons in the country who exchange their views while watching the nine o'clock TV news would be seen as violating the provisions of the National Security Law on forming assemblies and setting up communications.*"

2.6) Prohibition on unauthorized travel to North Korea

Article 6 of the National Security Law prohibits the illegal "escape" of a person to North Korea or "illegal infiltration" into South Korea from North Korea. The 1991 revision of the National Security Law added a requirement for the offence that the person must have had the "knowledge that he might endanger the existence, security of the state or the basic order of free democracy". As in other articles of the law, this term is vague and the onus in practice is generally on the defendant to prove that he or she did not have the intention to damage state security. The maximum penalty for this offence is ten years' imprisonment. This provision has been invoked to punish political activists who made unauthorized visits to North Korea, often in a public manner for the purpose of discussing peaceful reunification.

In 1990 the South-North Exchange and Cooperation Law was enacted. Under this law South Korean citizens may seek permission from the South Korean authorities to travel to North Korea or to meet North Koreans in third countries. This has led to increased contacts with North Koreans - especially by business people. However, permission has been denied to ordinary citizens wishing to visit North Korea to discuss reunification. The authorities appear to have used the law in an arbitrary manner, permitting business people and government officials frequent access to North Korea but denying access to others.

Parliamentarian Suh-Kyung-won visited North Korea in 1988 to discuss reunification issues with North Korean officials, and was sentenced to ten years' imprisonment when he returned to South Korea. His visit was conducted in secret but the court found no evidence that he had discussed "top secrets vital to national security". Nevertheless, he received a lengthy sentence, despite his status as an elected member of the National Assembly.

Writer Hwang Suk-yong was arrested in 1993 for a visit he made to North Korea in 1989. He also met North Korean officials and discussed reunification. Handing down the court's verdict in October 1993, the presiding judge is reported to have said *"even though the defendant claims his actions came from a pure desire for reunification of South and North Korea, it is evident that he violated the law. . . considering the chaos that might be caused by people having similar thoughts to his own, his behaviour cannot be regarded as just*". In September 1994 the United Nations Working Group on Arbitrary Detention, making its decision on the case of Hwang Suk-yong, said *"The Working Group does not regard the mere affirmation that Hwang Suk-yong had contacts with the North Korean intelligence services as sufficient in itself to establish that Hwang Suk-yong violated the law setting out restrictions necessary for the protection of national security . . .Hwang Suk-yong was sentenced solely for having exercised his right to freedom of opinion and expression which is guaranteed by Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights. It is also apparent that there is nothing to indicate that in doing so he had recourse to violence, incited violence or caused any threat to national security, public order or public health or morals and thereby violated a national law stipulating permissible restrictions aimed at the protection of those values."*

Two labour activists, Park Dong-su and Chong In-kun, were arrested in 1993 for attempting to visit North Korea via Berlin, again to discuss reunification issues. They were unsuccessful and returned to South

Korea where they were sentenced to two and one-and-a-half years' imprisonment respectively.

Park Yong-gil, aged 75, was arrested in July 1995 for visiting North Korea with the expressed aim of improving relations between North and South Korea and to offer her condolences on the death of former President Kim Il Sung[5]. Her visit was conducted publicly. In spite of her advanced age and very poor health, she was charged and tried under the National Security Law. Her trial was in process at the time of writing.

2.7) Penalties for "praising", "encouraging", "propagandizing" or "siding with" the activities of an "anti-state" organization

Article 7 of the National Security Law provides up to seven years' imprisonment for "praising", "encouraging" or "siding with" the activities of an "anti-state" organization. Article 7 makes the above activities an offence when carried out by members of organizations set up for the purpose of "praising", "encouraging" or "siding with" an "anti-state" organization. In order to distinguish a group that falls foul of Article 7 from an "anti-state" organization, the former is often informally referred to as an "enemy-benefiting" organization. The majority of arrests under Article 7 are for membership of an "enemy-benefiting" organization. For example, in May and June 1995 there were almost 50 arrests on these charges.

The 1991 revision of the National Security Law introduced the requirement that to constitute an offence the activities must be carried out "with the knowledge that he might endanger the existence, security of the state or the basic order of free democracy". As in other articles of the law, this term is vague and it is difficult to know what clearly constitutes a violation of the law and what does not. Materials deemed to "benefit" North Korea have included North Korean literature, historical works, even academic theses - most of which were already publicly available. Thus it may be permitted to read or possess a certain book if it can be proved that there was no intent to benefit North Korea. This provision has caused confusion and led to an arbitrary application of the law. In fact, almost all violations of Article 7 are a clear infringement of the rights to freedom of expression and association.

In 1994 and 1995 alone several hundred people were arrested under Article 7 on charges of forming or joining an "enemy benefiting organization", "praising" and "siding with" North Korea through the distribution and publication of books, leaflets and other printed material deemed to be pro-North Korean. The following are typical examples of arrests and convictions under Article 7, some of which demonstrate

5Kim Il Sung died in July 1994. South Korean citizens who sought to express condolences faced punishment under the National Security Law.

the inconsistent manner in which the law has been applied:

Professor Cho Kuk, a leading academic and critic of the National Security Law, was convicted in November 1993 under Article 3 on charges of joining an "anti-state" organization, the Socialist Academy. Set up to study socialism and its application in South Korean society, the academy had not used or advocated violence. He was given a two-and-a-half year suspended prison sentence. However, at his High Court appeal hearing in June 1994 the court decided that the Socialist Academy was an "enemy benefiting " organization under Article 7 of the law. Five other people were given suspended sentences for joining the Socialist Academy.

Nine members of *Saminchong* (Union of Socialist Young) were arrested in September 1994 on charges of spreading leftist and allegedly pro-North Korean ideology among workers and students. All were given suspended prison sentences and released in early 1995. Members of *Minjongryon* (Korean Political Alliance of the People) face prosecution for supporting the activities of an "anti-state" organization *Sanomaeng*. Since July 1993 60 members of *Minjongryon* have been arrested, mostly on charges of attempting to reestablish *Sanomaeng* (labelled as an "anti-state" organization).

Academics and others who appear to have supported or simply to have described North Korea's actions during the Korean War, have been punished for supporting North Korea. For example, Kim Mu-yong, 34-year-old history lecturer, was arrested in March 1995 on charges of siding with North Korea through his historical lectures, pamphlets and guided tours dealing with the Korean guerrilla movement in the 1940s and 1950s.

Ki Seh-moon, aged 60, was sentenced to two years' imprisonment in May 1995 for producing and distributing a pamphlet at the funeral of a former political prisoner who had fought for North Korea during the Korean War. The pamphlet was alleged to have "glorified" his activities and thereby to have "praised" and "sided with" North Korea although it was clearly issued in honour of the man at his funeral. It is difficult to see how, by producing such a leaflet, Ki Seh-moon could have known that he would be punished for his actions. In a reply to Amnesty International, dated August 1995, the South Korean Government said that "*Even though the acts of Ki Seh-won themselves do not, looking at the outward appearance, represent violence, since they beautify violent acts such as murder, and propagandize and instigate class struggle and revolution by violence, his actions are deemed unacceptable in free and democratic establishment of the Republic of Korea."*

Eight members of a singing troupe, *Heemangsae* (Bird of Hope), arrested in 1994 were accused of trying to stage a musical based on a poem deemed by the authorities to "praise" and "encourage" North Korea and of sending parts of the poem via a computer communications network. Five were sentenced to prison terms of up to two years' imprisonment.

Kim Yon-in, owner of *Heem* Publishing Company, was among a number of publishers arrested in 1994 for publishing pro-North Korean books. Yu Dok-ryol and Kim Chon-hee of *Han* Publishing Company were arrested in July 1995 on charges of publishing social science and North Korean books, including *Calling for a True Spring*, the autobiography of the former North Korean President Kim Il Sung. After their arrest the two men said they had published North Korean books so that ordinary people in South

Korea could gain an understanding of North Korea and its ideology. Park Ki-whan, however, who was sentenced to one year's imprisonment for publishing a North Korean novel *Yonghaekong*, was acquitted by a Seoul appellate court in April 1995. The court ruled that publication of this story did not represent a danger to safety and basic order in South Korea.

In May 1994 Kim Hyong-ryol was found guilty and sentenced to one year's imprisonment with a stay of execution for two years for posting a pro-North Korean message on the bulletin board of a computer network. The message contained information about the organization *Sanomaeng* (Socialist Workers League) which is considered by the authorities to be an "anti-state" organization. Kim Hyong-ryol was coordinator of a group called *Hyoncholdong* (Modern Philosophy Society) and said that he had posted the information as a subject of debate among its members. Delivering his verdict the judge is reported to have said that Kim's activity could be understood as a violation of the National Security Law if the law was interpreted "actively". However he is reported to have said that Kim's motive was lacking *'deliberate intention to destabilise the democratic order or benefit the enemy'.*

In what has been described as a landmark decision a Seoul appellate court acquitted Lee Chang-bok in April 1995, saying that expressing views identical to North Korea is not an offence unless it aims to benefit the enemy. Lee Chang-bok, Standing Chairman of *Chongukyonhap,* a national alliance of non-governmental organizations, had been sentenced to 10 months' imprisonment for organizing a rally in August which was alleged by the authorities to support North Korea's proposals for Korean reunification and to oppose the South Korean government's monopoly on contacts with North Korea. The appellate court judge said that "*Since Lee Chang-bok did not advocate the use of violence and other illegal means to overthrow the government or disturb the constitutional order, he should not be subjected to prosecution based on the sole reason that his views are similar to North Korea's policy",* adding that his *"freedom of ideology and expression must be ensured".* It is not clear that this ruling will be applied to other, similar cases.

3) Ideological "conversion" of National Security Law prisoners

The system of ideological "conversion" of political prisoners is used by the South Korean prison authorities as a means of putting pressure on political prisoners to renounce their real or alleged political views. Political prisoners who refused to comply have been subjected to discriminatory treatment in prison as a result. Information about "conversion" has been obtained from prison regulations and from prisoners' testimony over a number of years.

The basis for the "conversion" system is contained in a regulation issued by the Ministry of Justice in 1969. This classifies all prisoners into four classes. Most prisoners are in classes (A), (B) and (C) and receive various entitlements and benefits. Prisoners may work their way up to class (A) which is the group receiving most privileges. "Unconverted" prisoners are in class (D) and are not entitled to any of the privileges granted to other classes.

Former prisoners have told Amnesty International that in order to "convert" they were required to write a statement explaining what activities they had carried out to promote communism and why they now wished to give up this ideology. Until the 1980s prisoners were tortured to force them to "convert" but

today the pressure appears to be psychological. Those who refuse to convert are often denied rights accorded to other prisoners such as the right to send and receive regular correspondence, to have visitors other than family members, to meet other prisoners and to work. Prisoners who refuse to "convert" are also not considered for release on parole, except on humanitarian grounds due to old age or illness.

Prisoners convicted of "espionage" or "anti-state" activities under the National Security Law appear to be those who are required to "convert". Currently some 40 prisoners are believed to have refused to "convert". Some prisoners view the requirement as a violation of their right to hold their own opinions. Some argue that they have never held communist views and that making a statement of "conversion" would be tantamount to an admission of guilt on their part for a crime they did not commit.

Amnesty International has expressed concern to the South Korean Government that prisoners of conscience and political prisoners are under pressure to change their real or alleged political views and that those who refused were denied the possibility of release on parole and had other restrictions placed upon them.

Kim Sun-myung, aged 70, and Ahn Hak-sop, aged 65, had been in prison since 1951 and 1953 respectively until their release under a Presidential amnesty in August 1995. The two were serving life sentences on charges of espionage and had refused to "convert". They were therefore deemed ineligible to apply for release on parole and spent over 40 years in prison, mostly in solitary confinement. In August 1995 the South Korean Government, responding to Amnesty International's concern about Kim Sun-myung, said: *"The system of early release of prisoners applies to those who have served a certain term of the sentence, have repented of their criminal behaviours, have shown good conduct in prison and show no danger of committing second offences. In the case of unconverted prisoners, they do not qualify for early release because instead of showing remorse for their criminal behaviour they not only justify their actions but plot for propagation of ideology of communist revolution by violence.*" Kim Sun-myung, aged 70 and in very poor health, had spent 44 years in prison in virtual isolation. It is unclear how he would have had an opportunity or the desire to "plot" for communist revolution in South Korea, as this response suggests.

4) What the South Korean Government has said about amendment of the National Security Law

The South Korean Government has consistently linked this issue with inter-Korean relations, refusing to amend the law until the perceived threat from North Korea has been removed. In October 1994 Kim Jong-pil, then Chairman of the ruling Democratic Liberal Party, was reported to have affirmed his party's support for retention of the National Security Law in its current form, saying *"I look forward to the day when the security law will be repealed, but we can't do this before a basic change in inter-Korean relations takes place"*[6] The same article quotes Kim Jong-pil as saying "*The law is not an apparatus aimed at controlling and suppressing human rights."*

In August 1994, following a wave of arrests under the National Security Law, the US State Department is reported to have commented that the law *"has potential for human rights abuses"*[7] by the government and urged that it be amended. The South Korean Government responded by stating that amendment of the law was an internal matter and that the law would not be amended.

In November 1994 Ministry of Justice officials told Amnesty International delegates visiting Seoul that the National Security Law would not be amended and in August 1995 the government sent a written response to Amnesty International concerning some of the National Security Law cases it had raised. The government said that there were no prisoners of conscience in South Korea. It maintained that National Security Law prisoners have advocated violence, merely through having ideas similar to those of the North Korean Government because the latter has the goal of taking over South Korea by force.

In August 1995 the South Korean Government published a short document entitled *South Korean Sentiments Regarding the National Security Law.* In this document it argued that the law was necessary to maintain state security against the threat from North Korea and pointed out that North Korea has similar articles in its Criminal Code. It concluded that *"the National Security Law in South Korea is the best self-defence device against North Korea and essential for safeguarding the free democratic society as well as the life and freedom of the citizens from various undertakings by North Korea which keep undermining and overthrowing the government of the Republic of Korea and leftists who act in concert with North Korea."* It maintained that the 1991 amendment of the law had eliminated all problems but conceded, however, that *"A careful study of Article 7 (Praising and Sympathizing) of the National Security Law becomes necessary in order to counter some allegations that the article serves to infringe on the freedom of publication and art. . ."*

5) What South Koreans have said about the National Security Law

The National Security Law has been the subject of open debate in recent years. The Korean Bar Association, the opposition Democratic Party, academics and domestic human rights groups have called for the abolition or amendment of the law.

While the ruling party has generally supported retention of the National Security Law, many opposition

6Korea Herald, 20 October 1994.
7Korea Times, 12 August 1994

parliamentarians have called for its abolition or amendment. In August 1994 Lee Ki-taek, then leader of the Democratic Party said that the law should either be abolished or amended so that human rights are not abused and said that his party would make every effort to ensure that the law was amended during the forthcoming parliamentary session.[8]

In June 1995 the Chairman of the Asia-Pacific Peace Foundation and former Presidential candidate Kim Dae-jung was reported to have said "there is no such law in other democratic countries and I think our country is not so vulnerable as we need the National Security Law". In September Kim Dae-jung became president of a new, main opposition party called the National Congress for New Politics (NCNP). At the time of writing this party's official position on the National Security Law was not known to Amnesty International, although shortly before its inauguration, in August 1995, the NCNP is reported to have decided that the law should be retained in its current form. In October 1995 Kim Dae-jung was reported to have urged the government to lift restrictions on travel to North Korea.

In November 1994 the President of the Korean Bar Association told Amnesty International delegates that the Association's official position was that the National Security Law should be abolished. It believed that state security could be guaranteed using other criminal legislation and that the National Security Law was unnecessary.

The South Korean print media, with the exception of *Hankyoreh* daily, has tended to favour retention of the National Security Law in line with government policy. This attitude may have had an effect on public opinion which tends also to favour retention. However, in December 1994 an opinion poll conducted by the Korean Christian Social Research Institute revealed that 45.8% of respondents wished to remove some "objectionable elements" of the law, and 21.8% felt the application of the law should be reduced.

6) What United Nations bodies have said about the National Security

8Korea Times, 13 August 1994.

Law

In July 1992 the Human Rights Committee commented that its "main concern" about the implementation of the International Covenant on Civil and Political Rights (ICCPR) in South Korea was the continued operation of the National Security Law. It said in its written comments that:

"Although the particular situation in which the Republic of Korea finds itself has implications on public order in the country, its influence ought not to be overestimated. The Committee believes that ordinary laws and specifically applicable criminal laws should be sufficient to deal with offences against national security. Furthermore, some issues addressed by the National Security Law are defined in somewhat vague terms, allowing for broad interpretation that may result in [imposing sanctions for] acts that may not truly be dangerous for state security and responses unauthorised by the Covenant."

The Committee recommended that South Korea should:

"intensify its efforts to bring its legislation more in line with the provisions of the Covenant. To that end, a serious attempt ought to be made to phase out the National Security Law which the Committee perceives as a major obstacle to the realization of the rights enshrined in the Covenant and, in the meanwhile, not to derogate from basic rights."

At the time of writing the United Nations Working Group on Arbitrary Detention has made public its decision on 18 cases of prisoners convicted under the National Security Law (the decisions were made in December 1992, April 1993, September 1994 and June 1995). In each case the Working Group stated that the imprisonment contravened provisions protecting the rights to freedom of expression and association contained in the Universal Declaration of Human Rights and the ICCPR.

7) What Amnesty International has said about the National Security Law

For many years Amnesty International has called for the National Security Law to be amended in line with international human rights standards. Amnesty International is aware of the military and political situation caused by the division of the Korean peninsula. It takes no position of principle on the existence of national security legislation but in its view the restrictions on freedom of expression and association in the National Security Law go beyond the restrictions allowed by the ICCPR. Amnesty International believes that basic rights such as the rights to freedom of expression and association, should not be dependent upon relations with North Korea.

The proviso introduced in 1991 by Article 1(2) that the National Security Law *"should not be interpreted extensively or should not limit unreasonably the basic human rights of citizens secured by the Constitution"* has not given sufficient protection against imprisonment for the non-violent exercise of the rights of freedom of expression and association. The other amendments introduced in 1991 were insubstantial and did not significantly alter the application of the law.

There appears to be a clear pattern of arrests surrounding significant political events in South Korea. For example, in July and August 1994 National Security Law arrests rose dramatically and continued on a high level until the end of the year. This could be linked to the death of North Korean President Kim Il Sung and an ensuing clampdown on individuals and organizations with leftist ideology. The vague terminology of the National Security Law has enabled the authorities to use the law when it suits them to do so, against those it wishes to silence.

Amnesty International has campaigned for the amendment of the National Security Law through the publication of reports, prisoner appeals, letters to the South Korean authorities and meetings with government officials. During 1995 Amnesty International's members throughout the world have campaigned on behalf of almost 100 individual prisoners, most of whom are held under the National Security Law.

III) THE NEED FOR PRACTICAL MEASURES TO SAFEGUARD PRISONERS' RIGHTS AND TO PROTECT THEM FROM TORTURE AND ILL-TREATMENT

1) Torture and ill-treatment

International Covenant on Civil and Political Rights

Art 7: No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Constitution of the Republic of Korea

Art 12(2):No citizen shall be tortured or be compelled to testify against himself in criminal cases.
Art 12(7):In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit etc, or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt nor shall a defendant be punished by reason of such a confession.

In January 1995 the South Korean Government acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Torture and ill-treatment are prohibited by the South Korean Constitution and other domestic laws. Since the late 1980s, in particular since the public outcry over the death under torture of student Park Chong-chol, the South Korean authorities have taken a number of measures to prevent the occurrence of torture. Generally political prisoners now have access to their lawyers earlier (until the late 1980s people suspected of national security offences were commonly held *incommunicado* for one month); a number of police officers have been prosecuted and tried for torturing prisoners; and there have been cases where the courts have ruled confessions obtained by duress during interrogation inadmissible as evidence at trial.

However, Amnesty International continues to receive reports of the torture and ill-treatment of detainees. Political prisoners taken into custody in 1994 and 1995 reported that during their interrogation they were subjected to sleep deprivation and some reported that they were beaten and forced to do physical exercises. Some reported that interrogation had taken on a form of extreme intimidation, that they had been threatened, or that had been the object of sexual or other insults. The Agency for National Security Planning (ANSP), the Police and the Military Security Command (MSC) were accused of resorting to these methods.

A survey among 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 some 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.

In a document entitled "*Truth about criticism on Human Rights*" published in March 1994, the Ministry of Justice, while denying that sleep deprivation has been used, wrote that " *The Public Prosecutor's Office*

has recently decided in principle to stop doing all-night investigations on the grounds that it may give rise to accusations of forced sleep deprivation and human rights abuses." Testimonies received by Amnesty International suggest that night-time interrogations continue to be carried out by the police and the ANSP.

These reports show that the various legislative, administrative, judicial and other measures in place are not sufficient to effectively prevent such abuses. As a party to the Convention Against Torture (since January 1995) the South Korean Government is now bound to prevent and punish torture. Changes are urgently needed in practices related to pre-trial detention, training of law enforcement officers and a police and judicial culture that heavily relies on confessions obtained during interrogation. There needs to be a more effective system for investigating complaints and reports of torture.

2) Prisoners' testimonies of their interrogation

2.1) Ahn Young-min

Ahn Young-min, aged 26, was arrested on 13 June 1994 by the National Police Administration which held and interrogated him at its Hongje-dong facilities in Seoul for 20 days. In his testimony to the court he said he made a false testimony after being beaten and threatened with the responsibility for the arrest of other students and members of his family. Ahn Young-min's father, Ahn Jae-gu, 62, was being interrogated by the ANSP on charges of forming an "anti-state" organization and the authorities sought to obtain information from the son that would incriminate his father.

"When I denied the contents of the testimony I had given when I was in a state of despair [on being told that his father had been arrested as a spy] they threatened 'We thought you were a smart bastard but that is not the case. If you come out like that, we have no choice. We have our own ideas'. Shortly later someone called Mr XX and the person in charge,
Mr XX came in again and, at the same time conciliatory and threatening, said 'We are confirming the fact that it is not just you but your sisters that are also involved. But bringing everyone in the family in is something even we wouldn't do. We want to stop with detaining you, but if you don't listen, even we can't do anything about it. Don't exaggerate the problem: make it stop with you. We don't know what the results of your investigation will be but there is talk that if you do what we say you may be dealt with in the most lenient way possible. We have searched your girlfriend's house too. We found a few books problematic enough to put her in custody because they contained expressions beneficial to the enemy. If you keep being stubborn, it could lead to her arrest too, so do as you please.'

"As I kept denying that I had joined the organization and, following instructions from my father, controlled the student movement in the Taegu area, this time they began to threaten me by citing the names of my juniors. He went on to say 'We have already taken some of your juniors to the National Security Command. If you keep up with that we will have no choice. Since we went to the trouble of hauling you here from Taegu, we might as well make your case worthwhile. If that happens, not only your juniors but the people you have been meeting regularly will be brought in and forced to undergo some hardship. Given your past position as Student Council President, you should not let your juniors

get hurt, should you? You should make the choice of letting this stop with you. Think it over well.'

"At this stage I learned that the four junior members held in the National Security Command had been rounded up simply because they worked with me in 1991 as the representatives of colleges when I was President of the Student Council. At the time of their arrest, these four men were counting the days before their discharge from military service. This made me feel wretched. Upon hearing that one of them was in the United Military Hospital because of injuries sustained in a motor vehicle accident when he was taken to the National Security Command for questioning, I was furious. I also realized that if this was left to take its course, it could lead to the arrest of many more of my juniors, and that in fact they might already be here. Finding it impossible to stand any more threats and conciliatory tactics, including the threat to arrest my girlfriend and sisters, I had no choice but to make a false statement, saying that I had joined the organization. From that moment on, meetings between me and my father were made out to be assemblies and our conversations twisted into reports and instructions, culminating in the distortion that made me out to have joined Kugukchonui and on my father's instructions controlled the student movement in the Taegu area.

"Nevertheless I began denying all this after my detention was extended. I decided I could not let myself give in, and that if I let them continue distorting the facts I would never free myself from them. When I continued to refuse to comply they both conciliated and threatened me, working through the night and sometimes beating me to make me admit things I had not done. They went so far as to offer me alcohol to make me drunk and pleaded with me 'Since the deposition prepared by the police officers has no power in itself as evidence, you can deny it at the Prosecutor's Office, and there will be no problems. So, consider our situation and stop being so stubborn. We too have to make a living.' They needed to go a little deeper in their questioning but as I would not obey, they persistently kept up the conciliatory gestures, the threats, and subjected me to violence.

"When I was finally referred to the Prosecutor's Office at the end of the nightmarish 20 days' interrogation by the Anti-Communist section of the National Police Agency, I was determined to shed light on the truth. However, the investigation conducted in the Prosecutor's Office was no different from that at the police.

"Since the statement on the allegation that I had joined the organization was vague, they covertly edited that portion from the deposition. Then, they pressed me to admit that I had not joined the organization but had knowledge of my father's activities. They argued that my meetings with my father, which were few, could not be seen merely as meetings between father and son, but were construed as assemblies with a member of an "anti-state" organization. They dropped the argument about my being a member of the organization because the charges would not stick, but the Prosecutor's Office viewed my private meetings with my father in the same way the police did.

"... Simply put, I was held hostage. In particular I was used to blackmail my father. I vividly remember remarks the superintendent of the investigation team uttered in the course of the interrogation. Face beaming, he said 'Because you are here with us, your father admits 70 to 80 per cent while he would normally admit only 50 per cent. Even revolutionaries worry about their children.' His remarks still ring in my ears."

In a written response to Amnesty International in August 1995 on the case of Ahn Young-min and several co-defendants, the South Korean Government made the following statement: *"Whether the acts of torture were involved during judicial procedures cannot be judged based on the one-sided allegations of those sentenced, but should be judged through objective and thorough investigation and legal proceedings. It should be noted that no problems concerning torture were raised before, during or after the investigation and trial processes of those aforementioned persons."*

2.2) Kim Un-ju

Kim Un-ju, aged 24, was arrested on 8 September 1993 without a warrant of arrest by the ANSP which interrogated her until 24 September 1993. Her family and lawyer's first requests to meet her were refused by the ANSP and she met her lawyer for the first time three days after her arrest. She was charged on 23 October 1993, 45 days after her arrest, with meeting members of a pro-North Korean group in Japan. At her trial she was given a suspended sentence and released.

She told Amnesty International of being deprived of sleep, forced to do repeated strenuous physical exercises, slapped, shaken, insulted and threatened with sexual abuse. She was arrested after meeting a Japanese visitor at the request of Baek Heung-yong (also known as Pae In-oh). She received from the Japanese visitor a parcel which, unknown to her, contained books by North Korea's leader Kim Il Sung. Baek Heung-yong later made a public confession that he was working for the ANSP and had received orders to frame Kim Un-ju, her brother and others.

"About ten men arrested me as I walked away from the coffee shop. They forced me into a black car, one put his hand over my mouth. They took me to Namsan [an area of Seoul where the ANSP has facilities]. They did not show an arrest warrant and gave no explanation for my arrest, but they told me that my brother had also been arrested. At the ANSP I was taken to a room where there were about seven men. Two took photographs of me. They opened the bag the Japanese visitor had given me and saw that it was an autobiography of Kim Il-sung 'Going together with the Century'. I told them the circumstances in which I had been given the book and asked why they did not arrest the man who had given it to me. They replied it had nothing to do with them.

"After that I was slapped and kicked for about 30 minutes and was asked about the book. Then again I was slapped and kicked and asked about the book. When I mentioned Pae In-oh they got angry and slapped and kicked me again. Two teams of seven people were taking turns to interrogate me. Each had a shift of eight hours. I could not sleep for four days. Most of the time I was sitting, but sometimes I was forced to stand up and then I was kicked (mainly on the legs), slapped (in the face); they pulled my hair and pushed my head against the wall. I was also forced to do press-ups and other exercises, such as standing up and sitting down continually. I was made to walk up and down with my arms and hands raised for long periods. They threatened to undress me and asked me whether I was a virgin, how many times I had had sex. They told me things that my brother had said. They also threatened to make problems for my family's business.

"I was asked what I had done in Japan (which I have visited seven times). They would not accept my answers that I had been sight-seeing. ... I was told to write a statement. When they did not like what I wrote, I had to do it again. I wrote it about ten times. I wrote about what I did in Japan, the people I met, including members of Hantongnyon and people who attended the Pan-National Conference in Pyongyang. Then they stopped questioning after 17 days.

"The interrogation room was very small - about 1.5m x 1m (5' x 3') with three desks and a bed. Two people at the desks wrote down what I said. There was no window and the walls were thin enough to hear what was going on outside. I spent 17 days in this room. After four days I was able to sleep for 4-5 hours each day. On arrival I had been given an army shirt and clothes which I wore for three days; they were far too big. There was one woman among the seven interrogators and she accompanied me when I wanted to go to the toilet. I was given water and food three times a day and this is the only way I could tell what time it was.

"After the 17 days at Namsan I was taken to the Prosecutors' Office where I was questioned from 9am to 5pm each day for one month. In the evenings I was taken to Youndeungpo Detention Centre. I told the prosecutor and my lawyer about the way I had been ill-treated. The prosecutor was using the statement I had made to the ANSP and to which I had affixed my thumbprint. I saw in this document things I had not said. For example, I had admitted visiting the house of Lee XX but had not said that there was a photo of Kim Il Sung on the wall. Yet the ANSP version of my statement said I had seen a photo on the wall."

The South Korean Government wrote to Amnesty International in August 1995 on the case of Kim Un-ju, but did not make any response regarding the reported ill-treatment during interrogation.

2.3) Professor Chung Hyun-back

Professor Chung Hyun-back, aged 41, a Professor of History at Sung Kyun Kwan University in Seoul, was arrested by the ANSP on 5 October 1994 and detained for 32 hours, during which she was interrogated about a South Korean she had met on a few occasions when she was doing postgraduate studies in Germany more than 10 years ago. She was released without charge.

"As I arrived home around 11pm seven men were waiting outside my home, in two cars. They said they wanted to question me about my life in Germany and asked to come into the house. They searched the house for 30 minutes. They told my parents that the ANSP did not act as they used to in the past. They said they had an emergency arrest warrant, but what they showed me looked like a personal ID card and the man had his finger over the name. They did not show a search warrant. They confiscated five photograph albums, an address book, a computer diskette, a book by Mao Tse-toung, a total of seven or

eight items.

"I was then taken to Namsan where on arrival I was made to change into a uniform - a green coloured sports uniform. Then ten to 15 minutes later I was told to change back to my own clothes and was taken to Chungbu police station [in Seoul] where I was asked my name, date of birth, address and other personal details. It was about 1am. Then I was taken back to Namsan and questioned until 6am. After this I was allowed to sleep for one or two hours, but it was a small room and three people were present, so I could not sleep. Also it was very noisy outside.

"After 6am the questioning started again and lasted all day - perhaps 20 hours in total. They were polite but threatening. After about 12 hours they realised I had nothing to tell them. At about 1pm, 12 hours after my arrest, an official came out and said that a journalist had found out about my arrest because my brother had talked. He asked me to phone my parents and tell them not to say anything else to the press. I felt there was a good chance I would be released and I did as I had been asked.

"For the next three to four hours I was asked to write a statement about my case, including how may times I had met Kim XX. The ANSP tried to make it appear that Kim XX had already been arrested and that they could check what I told them against what he had said. My statement ran to 9/10 pages and took seven or eight hours to write. At around 8 or 9pm I was allowed to sleep for about two hours and then wrote some more. In total I slept for about two hours out of the 32 hours of my detention."

3) Lack of protection from arbitrary arrest:

3.1) Arrest procedures: the law

International Covenant on Civil and Political Rights

Art 9(2):Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Constitution of the Republic of Korea

Art 12 (1):... No person shall be arrested, detained, searched, seized or interrogated except as provided by law.
Art 12(3) :Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: except that, in a case where a criminal suspect is apprehended flagrante delicto, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an ex post facto warrant.
Art 12 (5):No person shall be arrested or detained without being informed of the reason thereof.

Art 12 (6):Any person who is arrested or detained shall have the right to request the court to review the legality of the arrest or detention.

A preliminary requirement of the Code of Criminal Procedure (CCP) is that arrest may only take place in a limited number of circumstances, namely when it is believed that the suspect has committed the offence, and the suspect has no fixed dwelling, or there are reasonable grounds to suspect that he may destroy evidence, or when he escapes or there are reasonable grounds to suspect that he may escape (Article 70, CCP). If the above circumstances exist, the Code of Criminal Procedure requires that normally arrest be conducted on the basis of a warrant of arrest issued by a judge.

Arrest without a court-issued warrant is legally allowed in the following circumstances:

(a)emergency arrest: where there are grounds to suspect that a person has committed an offence punishable by three years' imprisonment or more, and that person falls within one of the categories in Article 70, and the urgency of the situation makes it impossible to obtain a warrant of arrest from a judge, prosecutors or judicial officers may arrest a suspect without a warrant (CCP, Article 206). In cases of emergency arrest without a warrant, a warrant of arrest must be obtained from a court within 48 hours of the arrest or the suspect has to be released.

(b)arrest in flagrante delicto: a flagrant offender may be arrested without a warrant of arrest (CCP, Articles 211 & 212).

(c)voluntary appearance for investigation : there are no provisions in the Code of Criminal Procedure covering situations where a person "willingly" accompanies a judicial official to be interrogated. However in some cases, including those involving complaints of ill-treatment by detainees, the authorities claimed that the person detained "voluntarily" went to a police station to answer questions. This is often denied by the complainants. In its report to the Human Rights Committee in 1991 the South Korean government indicated that abuses of "voluntary" appearance for investigation would hopefully be curtailed by new regulations which confirm that a suspect may refuse a police request for "voluntary submission into police custody" and require that when voluntary detention takes place, relatives be informed, suspects be notified of their right to the assistance of a lawyer and to contact their relatives, and that such detention be limited to six hours. After that time a warrant of arrest should be obtained.

At present judges decide whether to issue an arrest warrant after examining the written application and documentation submitted to them by the prosecution authorities. Likewise they decide whether to grant extensions to the period when a suspect is in the custody of the police or the ANSP on the basis of a written application. At the time of writing an amendment to the Code of Criminal Procedure is before the National Assembly which would empower judges to call suspects to appear before them when they deem such an appearance necessary. However, the decision to call suspects would be at the discretion of the judges and the proposed amendment does not contain guidelines/recommendations on when it would be necessary. This amendment would reinforce the detainees' right under the ICCPR Art 9(3) to be brought promptly before a judge but many detainees would still not see a judge for several months after their arrest.

3.2) Arrest procedures in practice: detention for interrogation purposes

In practice suspects are very often detained without a court-issued warrant, for the purpose of interrogation. The lack of judicial supervision at this early stage of detention can lead in some cases to prisoners being held for short periods of incommunicado detention, facilitating the use of torture and ill-treatment.

The once widespread practice of "voluntary appearance for investigation" appears to have been generally abandoned in political cases. However, a large number of political prisoners and former political prisoners say that no court-issued warrants of arrest were shown to them when they were taken into custody. Arresting authorities now commonly resort to "emergency arrests", applying for a warrant of arrest later to the courts, or releasing the detainee without charges within 48 hours. In a few cases they have resorted to the "urgency" procedure allowed by Article 85(3) of the Code of Criminal Procedure, whereby officers may arrest a suspect even if they do not have with them the warrant issued by a court as long as they inform the suspect that the warrant has been issued and of the grounds for the arrest.

Although detention for the purpose of interrogation should be exceptional, it appears to have become the norm and judges appear to routinely authorize detention of political prisoners for interrogation purposes.

Under South Korean law the maximum length of time a suspect can be detained prior to indictment on an ordinary criminal offence is a total of 30 days after the issue of an arrest warrant. The National Security Law extends this period to 50 days for people suspected of some offences. In Amnesty International's experience, the long period of detention for interrogation before charge facilitates the use of torture and ill-treatment to extract confessions.

The Human Rights Committee in its comments on Article 9(3) of the ICCPR has indicated that in its view *"pre-trial detention should be an exception and as short as possible."* Commenting specifically on South Korea's initial report under the ICCPR the Committee said in July 1992 that *"the very long period allowed for interrogation before charges are brought is incompatible with Article 9, paragraph 3, of the Covenant"*.

On 14 April 1992 the Constitutional Court found the 50 day period to be an apparent human rights violation, saying *"The maximum 50 days detention before indictment is an apparent human rights violation, the only reason for which is the convenience of law enforcement authorities in their investigation. Even suspected law-breakers are entitled to protection under the Constitution guaranteeing prompt trials."* But in spite of these words the court ruled the 50 day period of detention to be constitutional, with the condition that it only applied to suspects held under Articles 3, 4, 5, 6, 8 and 9 of the law. The ruling has had little or no effect on political prosecutions.

As South Korean law does not allow release on bail before indictment and in practice applications for release on bail between indictment and trial succeed rarely, people charged with a political offence are often detained for six months before their trial is completed.

4) Violations of the right to be presumed innocent

4.1) The use of "confessions": the law

International Covenant on Civil and Political Rights

Art 14(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
(g) Not to be compelled to testify against himself or to confess guilt.

Constitution of the Republic of Korea

Art 12(2): No citizen shall be tortured or be compelled to testify against himself in criminal cases.

The right of a suspect not to be compelled to testify against himself is guaranteed by the Constitution. This guarantee is reinforced by the requirements in the Code of Criminal Procedure that a *"suspect shall be notified in advance that he may refuse to answer questions"* (CCP, Article 200(2)) and that *"A public prosecutor or judicial police official shall interrogate as to the necessary matters concerning the facts and circumstances of the offence, and shall give the suspect an opportunity to state facts beneficial to himself."* (CCP, Article 242).

The Constitution of the Republic of Korea and the Code of Criminal Procedure recognize the link between torture and ill-treatment and the collection of evidence and they contain detailed provisions restricting the admissibility of confession evidence at trial.

The rules on the admissibility of confessions can be summarised as follows:

(a)The confession of a defendant shall not be admitted as evidence of guilt if it is the only evidence against the defendant. (Constitution, Article 12(7) and CCP, Article 310)
(b)A confession deemed extracted involuntarily under torture, violence etc ... shall not be admitted as evidence (Constitution, Article 12(7) & CCP, Article 309).
(c)Records of the interrogation of a suspect by the police or other authorities other than a prosecutor may be used as evidence if its contents are confirmed at trial by the defendant (CCP, Article 312(2)).
(d)Records of the interrogation of the defendant or of another person may be admitted as evidence if the interrogation was conducted by a prosecutor and the following conditions are fulfilled:
- the genuineness of the document is established by its author at trial; and
- in the case of the records of the interrogation of the defendant, the statement has been "made in such circumstances that it is undoubtedly believed to be true", regardless of what the defendant says at trial (CCP, Article 312(1)).

The Supreme Court long held the view that a defendant's confession was admissible once its authenticity was accepted, unless the defendant proved that the circumstances made it untrue. The authenticity of the

document is presumed when the defendant acknowledges that the seal on the document is his (in South Korea affixing one's seal on a document has the same value as a signature has in European and other countries). Under this Supreme Court interpretation of CCP, Article 312, a defendant bears the burden of proving that his or her confession was false or involuntary, a burden often impossible to discharge.

In June 1992, the Supreme Court issued a decision reversing its previous interpretation. It was ruling on an appeal by a defendant sentenced to life imprisonment for rape and murder. The Supreme Court is reported to have said: *"The authenticity of the prosecutors' interrogation records can be accepted only when the defendant does not refute its contents nor challenges their voluntariness at trial. Therefore, when a defendant denies the genuineness of the interrogation records, court judges should make an inquiry as to whether the documents were based on statements voluntarily made by the defendant. In cases where defendants challenge the authenticity of the interrogation records and argue against the [accuracy] of the interrogation procedures, prosecutors bear the burden of proof of this at trial".*

4.2) Use of coerced "confessions" : the practice

Although South Korean law recognizes the right of a suspect to remain silent, prisoners' testimonies show that on the contrary pressure is applied on them to answer questions. In practice few prisoners find it possible to remain silent throughout their interrogation and many report being compelled by interrogators to sign a "confession" which is then used as evidence at the prisoner's trial. A defendant has the right to be presumed innocent until proved guilty, yet there is still in South Korea a law-enforcement and judicial culture that expects defendants to admit during their interrogation and at trial that they are guilty.

Although the Constitution and the Code of Criminal Procedure unequivocally prohibit the use of evidence obtained under torture, the courts' failure in the past to apply the law strictly has encouraged a culture where a confession is regarded as the best evidence. Until the courts disregard confessions whenever there are suspicions as to their voluntariness and truthfulness, there will remain an incentive for the police and the prosecution to obtain confessions.

The three prisoners whose testimonies are quoted at the start of this chapter demonstrate that the law does not always work in practice. Other examples are given below of prisoners who were unable to exercise their rights.

Baik Tae-ung, leader of *Sanomaeng* (Socialist Workers' League), arrested in April 1992 under the National Security Law, was sentenced to 15 years' imprisonment on charges of leading an "anti-state" organization. He testified at his trial that he sought to remain silent during interrogation but eventually gave in after being beaten, deprived of sleep and given a drug to lower his resistance.

"During the 22 days of ANSP interrogation, I was subjected to various types of torture such as sleep deprivation, drug injection and mob beating. Going through these rounds of torture I prepared myself for death three times... Five days before [my being sent to the prosecution], interrogators had this look on their faces that they had had enough of it, taking me to a special torture chamber. In the middle of the night investigators beat me for hours. They took turns in the beating. Their demand was that complete

silence was unacceptable".

Kang Ki-hun was arrested in 1991 on charges of aiding and abetting the suicide of a colleague, a charge he denied. He told his lawyer that he had resolved to remain silent during his interrogation by the prosecution but that his resolve collapsed after three days. Kang Ki-hun was found guilty and sentence to three years' imprisonment.

Kim Sam-sok, arrested under the National Security Law in September 1993 on charges of passing "state secrets" to an "anti-state" organization in Japan, told Seoul District Court in December 1993 that he had not been informed of the charges against him at the time of arrest and that throughout his 45-day interrogation by the ANSP and the prosecution he had never been informed of his right to remain silent. Kim Sam-sok was found guilty and is currently serving a four-year prison term.

In August 1995, in a written response to Amnesty International on the case of Kim Sam-sok, the South Korean Government said: *"It should be noted that all public prosecutors inform suspects of the nature of the accusations against them and their right to remain silent. Strict measure have been taken to enforce the Agency for National Security Planning and the police, who undertake primary investigations, to inform the nature of the accusations at the time of arrest and the right to remain silent before interrogation"*. In spite of this assurance, the practice would appear to be different.

Park Chang-hee, aged 63, was arrested in April 1995 under the National Security Law by the ANSP. During 19 days of questioning he claims to have been deprived of sleep, beaten, threatened and forced to drink alcohol. Under pressure he signed a "confession" saying that he had joined the North Korean Workers' Party. When he was later questioned by the prosecution he tried to withdraw the confession but was reportedly kicked and threatened. At his trial in July 1995 he told Seoul District Criminal Court: *"I was subjected to a number of ill-treatments including sleep deprivation, enforced drinking, being hit by books since I was taken to the Agency [ANSP] on 26 April. This continued even after I was referred to the prosecution. X, the prosecutor in charge, inflicted me with verbal intimidation and beating in a threatening atmosphere"*

4.3) Pre-trial publication of incriminating material

The right of a defendant to be presumed innocent until proven guilty by a trial places a particular duty on public officials to respect a defendant's presumption of innocence. South Korean law specifically prohibits pre-trial publication of material related to court cases. The Criminal Code, Article 126 states: "A person who, in the performance or supervision of, or in the assistance in, functions involving prosecution, police, or other activities concerning investigation of crimes, makes public, before request for public trial, the facts of a suspected crime which have come to his knowledge during the performance of his duties, shall be punished by penal servitude for not more than three years, or by suspension of qualification for not more than five years"

However, in a number of cases the South Korean authorities have released incriminating information to the media about suspects before their trial, possibly compromising the fairness of their trials . In October 1992 the ANSP released a sensational "spy" story to the media. It said that it had uncovered the largest spying organization in South Korea since the 1950s. A large exhibition was set by the ANSP at Seoul Railway Station, with posters of some defendants who were labelled as crucial links in the spy organization. At this time the defendants had been neither charged nor tried. Some were later found guilty and sentenced to long terms of imprisonment.

On 24 September 1993, one month before Kim Sam-sok and Kim Un-ju were indicted, the ANSP released the results of its investigations to the media in a 22-page news release entitled *The Kim Sam-sok and Kim Un-ju "spy case": a case connected with a North Korean espionage organization in Japan*. In November 1993 the Ministry of Justice told Amnesty International that the publication of such material was justified because the public and the media had a "right to know the truth", even though this information had clearly been published before the two had been tried. It implied that the defendants would be found guilty of the charges against them. In the event, the courts found that Kim Un-ju was not guilty of leaking state secrets.

Press releases issued by the ANSP and the police in the *Kukukchonui* (National Front for the Salvation of the Fatherland) case in June and July 1994 clearly suggest that Ahn Jae-gu and his co-detainees were guilty of espionage, even though they had not yet been tried. For example, a press statement of 2 July 1994 included a diagram of *Kukukchonui*, with the names and positions of Ahn Jae-ku and others as members of an organization working for North Korea.

5) Problems with custody arrangements

5.1) Prompt and regular access to family and lawyers: the law

International Covenant on Civil and Political Rights

Art 14(3):In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees ...:
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

Constitution of the Republic of Korea

Art 12(4):Any person who is arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as prescribed by law.
Art 12(5):No person shall be arrested or detained without being informed of ... his right to assistance of counsel.

In a ruling of 28 January 1992 confirming the right to confidentiality in lawyer-detainee communications (see below) the Constitutional Court underlined the importance of the role of lawyers in the following terms:

"... defence counsel understands the situation of a detainee, deliberates proper measures for the detainee, explains the meaning of the charges against him, discusses with him and gives instructions on the way, extent, time and content of statements to be made by the detainee. The role of defence counsel includes, but is not limited to, informing the detainee of the importance of the right to keep silent and the right to refuse to sign documents and the proper way to exercise these rights, let him know that he can be freed from false incrimination, give advice on the possibility of compelled confessions, deceit, leading questions, torture and the way to defend against these practices, investigate whether there have been such unlawful practices, and encourage, comfort and give advice to the detainee, understanding of his apprehension, frustration, agony, etc. "

International standards on the right to a fair trial recognise the right of assistance from legal counsel at all stages of a criminal prosecution, including the preliminary investigations in which evidence is taken. South Korean law guarantees the right of a suspect to assistance of counsel from the moment of arrest. Early and regular access by detainees to persons such as doctors, lawyers and family members is singled out by the Human Rights Committee in its general comments on Article 7 as a possible effective safeguard against torture. Amnesty International has long recommended to the South Korean authorities that such access, provided by South Korean law, be guaranteed in practice.

Since the revision of the Constitution in 1988 specified the right to prompt assistance of a lawyer and that the family of a detainee should be notified "without delay of the reason for and the time and place of the arrest or detention", the practice of incommunicado detention has generally decreased. Access to relatives is an important guarantee in view of the limited number of lawyers in the country.

5.2) Prompt and regular access to family and lawyers: the practice

As a result of the scarcity of lawyers in the country (in 1994 there were some 2800 lawyers for a population of 44 million), the absence of a state-sponsored legal aid scheme and the high fees said to be charged by most lawyers, the majority of detainees do not have access to a lawyer soon after their arrest. By law certain categories of defendants on criminal charges must be represented by a lawyer at trial but it is clear that many people do not benefit from early legal assistance because they cannot afford to hire a lawyer.

Detainees arrested or charged with political offences often have lawyers recommended to them by human rights groups. An increasing number of lawyers have joined, and are active in, groups such as the human rights committees of local bar associations and *Minbyun* (Lawyers for a Democratic Society). In May 1993 Seoul Bar Association started a "duty solicitor" scheme and by March 1994 local Bar Associations in Pusan, Suwon, Inchon, Taejon and Kwangju had also set up similar systems. In each city there is at least one lawyer on duty around the clock to give assistance to those who request it after arrest. The Bar Associations themselves finance these schemes. However, it appears that not all the police stations approached by the Associations have agreed to inform suspects of the availability of lawyers participating in this scheme to visit them in custody and advise them of their rights.

On a number of occasions political prisoners interviewed by Amnesty International said that upon being arrested they were not informed of their right to see a lawyer. For example, of nine members of *Sam* (Spring) youth group arrested on 2 September 1994 only one was told of his right to see a lawyer and of his right to remain silent. Most of these prisoners were aged 20 or younger and may have been unaware of their rights.

In many important cases under the National Security Law involving accusations of "anti-state" activities or "espionage", the interrogating agencies have denied key detainees their right to early access to their families and lawyers or have hampered contacts. In some cases political detainees were discouraged by officials to retain lawyers belonging to *Minbyun.*

Lawyers for several detainees arrested in September 1992 for their alleged involvement in a "spy" ring working for North Korea, were repeatedly denied access to their clients by the ANSP. Several of the detainees were facing charges of capital offences. The lawyers obtained orders from the courts that the ANSP should allow them to see their clients. Hwang In-oh met his lawyer for the first time 28 days after his arrest; Hwang In-uk, more than 50 days after his arrest; Choi Ho-kyong, 22 days after his arrest; and Kim Nak-jung, 13 days after his arrest. Several prisoners in this case said that they had been questioned overnight, deprived of sleep, threatened, intimidated and beaten in order to force them to make a confession. Early access to lawyers would have been a significant safeguard against abuse.

The above cases are exceptional and in most cases lawyers are given access to suspects within days of their arrest. Access, however, is often hampered. Meetings are often too short, do not take place in private and are often conducted in a threatening environment. Kim Un-ju, arrested on 8 September 1993, did not see her lawyer for three days after her arrest. The first meeting with her lawyer lasted for approximately 30 minutes in the presence of interrogators who took notes.

Other more recent examples are as follows: On 22 March 1994 a lawyer refused to meet his client Lee Song-woo, detained under the National Security Law, because National Police Administration officials refused to allow confidential communication. On 2 August 1994 a lawyer was denied permission to meet Lee Sang-chul, detained under the National Security Law in Seodaemun Police Station in Seoul. On 16 February 1995 a lawyer applied to the Military Security Command to see eight people arrested between two and four days earlier, but was refused access on the grounds that interrogation could not be interrupted. Park Chang-hee, arrested under the National Security Law in April 1995 was only given very restricted access to his lawyer and family during questioning by the prosecution.

Lawyers in South Korea are not allowed to be present during a suspect's interrogation. In its August 1994 position paper on the government's proposed revision of the Code of Criminal Procedure the Korean Bar Association has proposed that lawyers be allowed to be present during interrogation. The government's reaction to the proposal is not known to Amnesty International.

According to statistics submitted to the National Assembly by the Supreme Court in October 1992, there had been 15 cases in which courts, at the request of lawyers representing suspects interrogated under the National Security Law who were prevented from meeting their clients, ordered that access be granted. Twelve of these cases concerned access by the ANSP and the three others by Seoul District Prosecutor's office, Seoul Detention Centre and the Security Division of the National Police Administration in Seoul.

After an arrest, family members are often unaware of where the prisoner has been taken, leading to a delay of one of two days before the family manages to visit the prisoner and to hire a lawyer. Ahn Jae-ku was arrested on 14 June 1994 in the early hours of the morning while he was working at his private office. His family knew nothing of his arrest until 15 June when they were informed by a shop owner who lives close to Ahn Jae-ku's office. The family then started to look for him and, on 16 June, found that he was held at the ANSP headquarters at Namsan. They went to Namsan and tried to see him, but were told to come back the following day when they were finally permitted to see him - three days after his arrest.

During the 1970s and 80s National Security Law suspects were routinely held incommunicado for several weeks or months, during which time they were reportedly tortured and forced to sign "confessions". They include prisoners convicted of espionage and currently serving life sentences. (See Chapter IV for further information).

5.3) Confidentiality is not guaranteed

In its General Comment on Article 14 of the ICCPR the Human Rights Committee confirmed that *"... this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications".*

This principle is not disputed by South Korea's highest courts who were called to rule on the matter. In March 1991 the Supreme Court ruled that "*the right to communicate with defence counsel may not be restricted".* A few months later, a lawyer applied to the Constitutional Court on the same issue after agents of the ANSP listened to and recorded the lawyer's interview with his detained client and took photographs of the meeting, in spite of the lawyer's objections. On 28 January 1992 the Constitutional Court confirmed that Article 12(4) of the Constitution guaranteed the confidentiality of communications between a lawyer and his client in detention and that there should be no interference. After having referred to the role of a defence lawyer the Court said:

" All of these activities by counsel become possible only when communications between counsel and the detainee are made in full confidentiality and without restriction, influence, pressure or interference by law enforcement officials, and in case law enforcement officials watch, hear and/or record the interview and/or take photographs of the lawyer and the detainee, thereby creating a precarious atmosphere, defence counsel will be restricted in fulfilling its role and this will result in a violation of the Constitution."

In practice most detention centres and police stations do generally permit meetings to take place in confidence. However, the ANSP and the Security Division of the National Police Administration do not have specified rooms for lawyers and their clients to meet in and lawyers have told Amnesty International that when visiting clients detained by these two agencies, they fear their conversations may be recorded.

The testimony of a prisoner interrogated by the ANSP after his arrest in August 1992 casts doubt on whether the ANSP respects the spirit of the Constitutional Court's ruling. Noh Jung-son, Secretary General of the Association for the Study of Peace and Reunification was arrested on 27 August 1992 and interrogated by the ANSP. During his trial he told the court:

"I was illegally and forcibly arrested. ... The statements were coerced [from me] by means of humiliating and brutal forces which destroyed the humanity of a man. It was not until I submitted and admitted all the things the investigation agency wanted that I was allowed to have an interview with a lawyer. <u>After the interview with my lawyer, I was forced to tell them the contents of the interview.</u>"

On the occasion of the revision of the Penal Administration Law in early 1995 a new provision was included to expressly prohibit interference with the confidentiality of communications between a lawyer and an unconvicted prisoner.

5.4) Access to doctors

Amnesty International has received information that some prisoners were seen by doctors who attended to the injuries of prisoners who had suffered at the hands of their interrogators. For example, Chun Hee-sik,

aged 34, said that he saw two doctors during 48 hours of interrogation by the ANSP in September 1992. After he had been beaten, he said he was administered medication by the doctors. Son Byung-son, aged 52, also arrested by the ANSP in September 1992, claims that a doctor gave him an injection and massage treatment after he had been beaten by ANSP officials.

Amnesty International understands that detainees are not always given a medical examination after they are taken into custody, or examined regularly throughout their period of interrogation. Amnesty International believes that all detainees in South Korea should be offered regular medical examinations throughout the period of interrogation by a medical officer who belongs to a different government agency to that of the investigating officials. Examinations should take place in private and written records should be kept. Records of medical examinations should be confidential but capable of being communicated, at the detainees request, to his or her lawyer or family.

Such procedures would constitute an additional safeguard against torture and ill-treatment. Furthermore, when allegations of torture or ill-treatment are made, such medical records would constitute objective and independent information on the treatment and condition of the suspect during interrogation.

5.5) No separation of interrogating and detaining authorities

The three prisoners whose testimonies are given at the beginning of this chapter were all interrogated by the agency in whose facilities they were held.

The separation of interrogating and detaining authorities is an important safeguard for detainees. Based on its experience in documenting instances of torture and ill-treatment throughout the world Amnesty International has concluded that the formal separation of authorities responsible for interrogation of suspects from the authorities responsible for their detention and welfare gives additional protection to detainees. They are seen regularly by an agency that is not involved in their interrogation and whose role is to ensure their welfare.

The ANSP claims to have no detention facility, saying that all suspects questioned by the Agency are held overnight at Chungbu Police Station which is situated close to the ANSP facility at Namsan. In recent years, and in an apparent attempt to offset criticism, the ANSP has consistently denied holding prisoners overnight at Namsan while in reality some suspects are simply registered at Chungbu Police Station and held at Namsan interrogation facility. After her arrest in September 1993, Kim Un-ju spent 17 days in the ANSP facilities in Namsan. Thereafter her case was transferred to the prosecution authorities. At this stage there was a separation between the interrogating and detaining authorities: she was taken to the Prosecutor's office during the day and taken back, in the evening, to Youngdeungpo Detention Centre. Similarly Professor Chung Hyun-back was held in the ANSP facility at Namsan for the whole duration of her detention, save for a short visit to Chungbu Police Station at the beginning for registration purposes. Ahn Young-min, arrested in June 1994, was held for the first 20 days of his detention and interrogation at Hongjae Police Station.

6) Inadequate control of investigative agencies: the ANSP

In its comments in July 1992 on South Korea's implementation of the ICCPR the Human Rights Committee expressed concern about the extent of the investigative powers of the ANSP. Amnesty International has also expressed concern about the apparent lack of accountability regarding the arrest and interrogation powers of the ANSP.

The ANSP has for decades been responsible for the investigation of most people suspected of national security offences and in the process for many irregularities and violations of human rights. Its role and powers were restricted in 1993 with the passing of an amendment to the National Security Planning Agency Act (ANSP Act). The reasons for the amendments that were given in the bill's preamble by the Chairman of the National Assembly's Special Committee included the need to ensure the Agency's political neutrality, to strengthen the control over it by the legislature and to eliminate the grounds for abuse of its authority.

The 1993 revision introduced two new provisions prohibiting abuse of power. Article 11(1) prohibits members of the ANSP from *"abusing their authority by arresting or confining a person without following the procedures specified in law or compelling other organizations or persons to perform a duty beyond the scope of their position or which hinders the exercise of a person's rights"*. Article 11(2) requires members of the ANSP to observe the legal procedures for the investigation of offences, such as, for instance, the procedures relating to notification of the cause, time and place of detention to the detainee's lawyer, and notification to a detainee that he has the right to appoint a defence lawyer; the corresponding right of the lawyer to have an interview with the detainee, deliver or receive documents or other things and arrange for the detainee to see a medical doctor.

It is not clear to Amnesty International if and how these new provisions have been enforced. In practice the organization has received continued reports of abuse of suspects' rights by the ANSP. Amnesty International knows of no prosecutions for violation of these provisions.

The 1993 revision of the Act also removed from the ANSP the power to investigate offences under Article 7 of the National Security Law (praising, encouraging and siding with an "anti-state" organisation) and Article 10 of the same law (failing to report to the authorities a person who has violated specified offences under the National Security Law). However, the ANSP continues to have, and exercise, the power to investigate other offences under the National Security Law and to interrogate suspects. It has the authority to investigate, among others, offences of insurrection and foreign aggression under the Criminal Code and some offences against the national security under the National Security Law.

IV) THE LACK OF AN EFFECTIVE REMEDY FOR THE VICTIMS OF HUMAN RIGHTS VIOLATIONS

1) The lack of an effective remedy

International Covenant on Civil and Political Rights

Art 2.3 Each State Party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Constitution of the Republic of Korea

Art 26 (1) All citizens shall have the right to petition in writing to any governmental agency as prescribed by law.
(2) The State shall be obligated to examine all such petitions.
Art 111(1) The Constitutional Court shall adjudicate the following matters:
5. Petitions relating to the Constitution as related by law.

One of the obligations the South Korean Government undertook when acceding to the ICCPR in April 1990 is to provide effective remedies to victims of violations of the rights guaranteed in the Covenant.

The remedies long provided by South Korean law include administrative remedies, prosecution of a criminal offence and applications to the courts, including since 1988 to the Constitutional Court. There is no independent body or individual responsible for the protection of human rights and the investigation of reports of human rights violations. South Korea's accession to international human rights treaties has given victims additional remedies. Following South Korea's accession to the First Optional Protocol to the ICCPR, also in April 1990, victims of human rights violations are now entitled to send communications to the Human Rights Committee and a few have used this procedure as a last resort.

Until the late 1980s the most political prisoners could hope for was a reduction of sentence or an early release under a presidential amnesty. In recent years lawyers advising victims of human rights violations have more aggressively challenged the authorities responsible for the abuses. When they successfully obtained a measure of redress, it was often thanks to their perseverance against official inactivity, obstruction or delays.

In practice, while a few victims of human rights abuses have obtained redress or compensation, the existing procedures are generally not effective enough and apparent victims of severe human rights violations under previous governments appear to be left without an effective remedy at all.

Many former prisoners with credible testimonies of human rights violations tell Amnesty International that they do not intend to seek redress from the authorities. They usually give the following reasons: (a) they do not think the government or the courts will give them redress; (b) in the absence of independent witnesses and material evidence they believe they will not be able to prove their claims; (c) they expected a certain amount of bad treatment and illegalities in detention and they think that only extremely severe

physical torture amounts to a violation of human rights.

This chapter looks at the remedies currently available to victims of human rights violations in South Korea and discusses various cases to assess their effectiveness in practice. In particular it looks at the cases of political prisoners arrested and convicted under previous governments who, without urgent reforms, remain without effective remedies.

2) Problems in the investigation of human rights violations

In its initial report to the Human Rights Committee the South Korean government wrote that some prosecutors were assigned responsibility for human rights matters, such as *"to gather information on the instances of human rights violations, and to handle the criminal cases, petitions or secret investigations relating to human rights"*. (Paragraph 10, page 3). Amnesty International has no information on the work of these prosecutors, nor on how their independence and impartiality are guaranteed and protected.

Following South Korea's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in January 1995, the government is now bound to investigate reports of torture, promptly and impartially, "wherever there is reasonable ground to believe that an act of torture has been committed" (Article 12). Amnesty International has no information about the measures introduced by the South Korean government to fulfill this new obligation. The violation of some of the rights guaranteed by the ICCPR and South Korea's Code of Criminal Procedure (CCP) amount to criminal offences. Yet there appear to have been few prosecutions.

2.1) Violations of human rights are criminal offences

The following violations of human rights are criminal offences:

Unlawful arrest or detention: Under the Criminal Code (Article 124), the Act Concerning Additional Punishment of Specified Crimes (Articles 4-2) , and the ANSP Act (Articles 11 and 19), those responsible for unlawful arrest or detention may be imprisoned for between one year and life imprisonment.

Abuse of authority obstructing a person from exercising a right: Under the Criminal Code (Article 123) and the ANSP Act (Articles 11 and 19), those responsible may be imprisoned for between one year and seven years' imprisonment.

Act of violence or cruelty: Under the Criminal Code (Article 125) and the Act Concerning Additional Punishment for Specified Crimes (Articles 4-2), those responsible may be imprisoned for between five years and life imprisonment.

2.2) Prosecution only investigates formal complaints

Generally it would appear that the prosecution authorities do not initiate investigations of their own accord into reports of violations of human rights. Reports of torture and ill-treatment are investigated only when the victim made an official complaint.

Amnesty International's understanding of South Korean law is that there is no requirement for a formal complaint by a victim to trigger the investigation of a criminal offence. Investigation should be carried out when an offence is suspected: "A public prosecutor shall, when he deems an offence has been committed, investigate the offender, the facts of the offence, and the evidence" (CCP, Article 195) and "When a public official in the course of his duty believes that an offence has been committed he shall lodge an accusation (CCP, Article 234(2)). The institution of a prosecution is at the discretion of the prosecutor in so far as he is allowed to consider matters such as the personality and character of the offender, and the motives and circumstances after the offence (CCP, Article 247(1) & CC, Article 51).

The prosecution authorities' apparent unwillingness to investigate reports of torture and ill-treatment is illustrated by the following cases:

Kim Sam-sok and his sister Kim Un-ju were arrested in September 1993 for alleged offences under the National Security Law. Both Amnesty International and the United Nations Special Rapporteur on Torture wrote to the South Korean authorities about reports that the two had been tortured and ill-treated during their interrogation by the ANSP. Kim Sam-sok is said to have been beaten, stripped naked and sexually assaulted. Kim Un-ju, who was released on a suspended sentence, told Amnesty International that she was deprived of sleep for several days, forced to do repeated physical exercises, slapped, shaken, insulted and threatened with sexual abuse (see Chapter III for further details). At their first trial hearing in December 1993 they told the court that they had been ill-treated by the ANSP. In each of his appeal trials, before Seoul High Court and the Supreme Court, Kim Sam-sok made statements about this torture. However, the South Korean Government informed the United Nations Special Rapporteur on Torture in October 1993 that both prisoners *"... had been treated humanely during their interrogation. No complaint had been filed by their family members or attorney with regard to their treatment while in detention".*

The authorities were aware of the claims of torture and ill-treatment as evidenced by a reference to the two prisoners made in a booklet published in March 1993 by the Ministry of Justice (*Improved Human Rights and Arguments about Violations of Human Rights in Korea)* but had decided not to investigate the claim, waiting for evidence to be produced at the trial. The booklet said: *"whether they have been tortured or not will be brought to light as the trial progresses. So far, no evidence of the alleged torture has been found..."* This comment is puzzling. It is not the responsibility of courts to investigate complaints of torture; the courts are merely concerned to establish whether it can accept evidence when it is claimed to have been obtained under torture.

In a written response to Amnesty International, in August 1995, the South Korean Government said *"With regard to Kim Sam-sok's allegation, his wife Yoon Mi-hyang, has submitted a bill of indictment to public prosecutor's office. An extensive investigation by Seoul District Public Prosecutors Office is underway and whether cruel treatment was involved will become clear as the investigation progresses".* The reply gave no information about Kim Un-ju's reported ill-treatment.

It appears from this series of communications that the authorities only started to investigate the reports of

Kim Sam-sok's torture when his wife submitted a formal complaint, although he had made this complaint in public at each stage of his trial and appeal process. Two years after the alleged torture occurred, the authorities have still not completed their investigation. Furthermore, there appears to have been no investigation into the ill-treatment of Kim Un-ju, simply because no formal complaint was lodged. This is clearly unsatisfactory.

Four prisoners arrested in June 1994 for their involvement in the alleged "anti-state" group *Kukukchonui* - Ahn Jae-ku, Ahn Young-min, Yu Rak-jin and Jong Hwa-ryo - claimed to have been tortured or ill-treated during interrogation by the ANSP and the police. In August 1995 the South Korean Government told Amnesty International *"It should be noted that no problems concerning torture were raised before, during or after the investigation and trial processes of those aforementioned persons."* However, Amnesty International is aware that at least one of these prisoners, Ahn Young-min, made a detailed statement about his ill-treatment at his trial before Seoul District Court on 4 October 1995 (See Chapter III for extracts of his statement to the court).

Another case where the prosecution authorities did not initiate an investigation into reports of torture is that of Baik Tae-ung. He was arrested in April 1992 and interrogated for 22 days by the ANSP for offences under the National Security Law. At his trial he testified that he had been deprived of sleep and subjected to drug injection and beatings. On 8 July 1992 he told Seoul District Court *"During the 22 days of ANSP investigation I was subjected to various types of torture such as sleep deprivation, drug injection and mob beating."* In November 1993 the South Korean government informed the United Nations Special Rapporteur on Torture, who had expressed concern about the reports, that *"the allegation of maltreatment was unfounded. It had not been substantiated during the trial and Mr Baik had not filed a complaint."* This in spite of the fact that Baik Tae-ung had made clear allegations of torture during his trial.

The comment that Baik Tae-ung had not substantiated his claims of torture underlines the comment often made by prisoners that they cannot hope to obtain redress for human rights violations because they do not have access to incontrovertible evidence to support their claim. Yet the collection of such evidence and the burden of proof are rightfully the responsibility of the prosecution authorities.

2.3) Formal complaints are slow, ineffective and result in few prosecutions

Prisoners often do not realise that they are the victims of human rights violations and that their treatment breaches South Korean law and the ICCPR. They rarely know that they have the right to make a complaint, nor do they know the procedures to follow. Many prisoners cannot afford to hire a lawyer and those who can know that they are unlikely to obtain justice. There appear to have been very few prosecutions of law enforcement officials. This cannot be because there is a lack of victims - it is obvious from this report alone that there are many victims.

Under South Korea law both the victim of an offence and a third party who believes that an offence has been committed may lodge a complaint or accusation (CCP, Articles 223 & 234(1)). A complaint or accusation may be filed with the police or a prosecutor either orally or in writing (CCP, Article 237). If it

is received by the police the latter is required to investigate the matter promptly and forward the relevant information to the prosecution. A prosecutor investigating a complaint is required to decide whether to institute a public prosecution within three months of the complaint or accusation being made (CCP, Article 257). The complainant or accuser must be informed in writing of the reasons for not instituting a public prosecution, and this within seven days of a decision. For whatever reason, it appears that the prosecution often decides not to press charges.

Decisions by the prosecution authorities not to indict may be appealed. When the complaint concerns offences under Articles 123 to 125 of the Criminal Code (ie. obstructing a person from exercising a right, unlawful arrest or detention, or violence or cruelty against a suspect) a decision by the prosecution authorities not to prosecute may be appealed to the High Court (CCP, Article 260) which may decide the decision was improper and order public prosecution. In at least two cases this procedure was successfully used to prosecute alleged torturers. Several police officers were convicted of the torture of Kim Keun-tae, in 1985, and Kwon In-suk in 1986. These results are, however, exceptional. In practice the High Court has dismissed petitions it considered to be of minor importance.

Under the Public Prosecutors Office Act the victim may also file an administrative appeal with the High Prosecutor's Office (Article 10) which has the power to order the prosecution to indict and a further appeal to the Supreme Prosecutor's Office. If this is unsuccessful an appeal may be filed with the Constitutional Court which has sometimes ordered the prosecution to reinvestigate a case. (The Constitutional Court does not itself have the power to order the prosecution to indict).

In practice, investigations do not appear to have been carried out thoroughly and there are few prosecutions. Kim Un-ju (described above) complained of her treatment at the hands of the ANSP when she met the prosecutor in charge of her case. Yet the authorities officially told the United Nations Special Rapporteur on Torture that no investigation was carried out because no complaint had been filed by her "family or attorney". In these circumstances constitutional and other legal guarantees of the right to complain about violations of human rights cannot be said to be effective.

The case of Kim Sam-sok (described above) demonstrates how slow the complaints procedure is. In August 1995 the government told Amnesty International that an investigation into his claims of torture is being conducted by Seoul District Public Prosecutor's Office - two years after the alleged torture occurred.

Artist Hong Song-dam was arrested in August 1989 under the National Security Law. He said that he had been deprived of sleep for several days, stripped naked and beaten. During Hong Song-dam's trial before Seoul District Court 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 results of "battery and kicking". Although Hong Song-dam made a formal complaint, including drawings of his torturers, Ministry of Justice officials told Amnesty International in November 1992 that no prosecutions would be carried out because his torturers could not be identified.

Park No-hae, poet and leader of *Sanomaeng* (Socialist Workers League) was arrested under the National Security Law in March 1991. During questioning by the ANSP he said that he had been beaten on three occasions by a group of some 13 officials, denied sleep for two days and thereafter only permitted to

sleep for a few hours each night. He made a formal complaint of torture. In November 1991 the South Korean Government responded to the United Nations Special Rapporteur on Torture, who had expressed concern about the allegations, that *"He admitted spontaneously facts which constitute violations of the National Security Law, not only during the trial proceedings but also during the investigation. Furthermore, the court rejected the complaint concerning his alleged maltreatment."* There was no explanation as to why the complaint was rejected.

Chun Hee-sik, a trade union activist, was arrested by officials of the Agency for National Security Planning on 4 September 1992 without a warrant of arrest and held for 48 hours. He said that he had been forced to change into a military uniform and was beaten on the back, thighs and neck by a group of seven or eight men for one hour. During his interrogation he saw two doctors who administered medication to him. He was only allowed to sleep for four hours during his 48 hours' detention. He was released without charge. After his release he was admitted to a Seoul hospital for treatment. He filed a complaint with Seoul District Prosecutor's Office about his treatment at the hands of the ANSP. In a reply to the United Nations Special Rapporteur on Torture who had raised Chun Hee-sik's case, the South Korean authorities wrote on 29 November 1993 that the complaint was being investigated by the prosecution authorities. From this official reply it appears that some fourteen months after the alleged torture had occurred, the prosecution authorities had not been able to take a decision.

In February 1995 three men accused of murder were acquitted by a Pusan court when the court ruled that their confessions had been extracted under torture. Although Pusan Bar Association made a formal complaint, to Amnesty International's knowledge at the time of writing no official investigation had been carried out.

2.4) The statute of limitations

The Code of Criminal procedure, Article 249, provides various statutory limitations on public prosecution according to the maximum penalty provided for the crime. In the case of torture the statutory limitation is generally five years or seven years, depending on the degree of injury inflicted.

The importance of the limitation period surfaced as an issue when nine political prisoners filed a joint complaint with the Seoul District Public Prosecutors' Office on 7 July 1994 that they were tortured by investigators of the ANSP. The prisoners had all been arrested over seven years ago. The Seoul District Public Prosecutors' Office decided not to investigate the complaint on the grounds that the alleged offences had taken place more than seven years before and prosecution could not take place under the statute of limitations on public prosecutions. The nine prisoners jointly appealed against the decision to the High Public Prosecutors' Office and then to the Supreme Public Prosecutors' Office, but the appeals were unsuccessful.

The prisoners then individually filed applications to the Constitutional Court in January and February 1995 arguing that the statute of limitation should not apply to cases of torture since the Constitution prohibits torture. On 15 March 1995 the Constitutional Court dismissed the appeal filed by Hwang Tae-kwon (see details of his case below). The Court apparently accepted as valid the provisions in the statute of limitations on public prosecutions and gave no indication that it had considered whether the statute of

limitations was constitutional or not. The Court dismissed the petition of Lee Sang-chul at a later date. At the time of writing the cases of the seven others were still pending with the Court.

Many long-term prisoners who claim they were tortured in past decades have been left without an effective remedy, although at the time of their arrest severe human rights violations were widespread and no remedies whatsoever could be expected from the courts or the government.

Amnesty International believes that all reports of torture should be investigated. Those found responsible for torture should be brought to justice, no matter how much time has elapsed since the commission of the crime.

2.5) Civil suits

A few political prisoners have taken the step to sue the government for monetary compensation for an unlawful act committed by a public official in the course of his official duties, a right given to them under Article 29(1) of the Constitution and the National Compensation Act.

In December 1993 a former torture victim, Mun Guk-jin, brought a civil law suit against the government claiming damages for the psychological illness resulting from torture he was subjected to in 1980 and 1986. In May 1995 he was awarded the substantial sum of 140 million won (US$ 175,000) compensation by Seoul District Civil Court.

Other cases have attracted little compensation from the courts. At the end of 1994, lawyer Cho Yong-whan was awarded the sum of one million won (US$ 1,250) damages by a Seoul District Court for violation of his right to defend his client Noh Tae-hoon and for assault by law enforcement officials.

3) Difficulty of obtaining a review of the cases of long-term prisoners

Amnesty International believes that at least 25 "long-term prisoners" whose convictions under the National Security Law for "anti-state" activities and/or "espionage" for North Korea have been finalized by the Supreme Court, were convicted after unfair trials and that they were the victims of torture and ill-treatment. They are referred to as "long-term prisoners" on account of the length of their sentences (most ranging from 15 years to life imprisonment) and of the length of time they have already spent in detention (over seven years). Most have been held since the 1970s and 1980s. These prisoners have failed to obtain any redress. They have been unable to obtain a review of their cases.

Typically in these cases there is evidence of procedural irregularities, including illegal arrest, incommunicado detention for a long period of time; claims by the prisoners that they were forced to confess under torture or ill-treatment; lack of facilities in the preparation of the defence and conviction mainly based on confession. In some cases the information available to Amnesty International strongly supports the view that they are prisoners of conscience and should be released. In the other cases Amnesty International is seeking additional information and is calling on the authorities to review their

cases.

In a book entitled "*Truth about criticism on human rights"* published in March 1994, the Ministry of Justice said *"Amnesty International insists that Kim Song-man, Hwang Tae-kwon, Ham Chu-myong, Yu Chong-sik and Cho Sang-nok, and others who are detained for espionage should be released because they have been convicted after being found guilty on the strength of their confession made under torture. On the contrary, a thorough examination was conducted and to date no proof was sufficient to call for a retrial."*

Human rights lawyers in South Korea have sought to obtain a retrial for some long-term political prisoners. Under Article 420 of the Code of Criminal Procedure a retrial may be granted in some circumstances, including when there is a final court judgment that some evidence was forged or that a testimony was false or that a judge, public prosecutor or police official involved in the case committed an offence in the discharge of his official duties, or when "clear evidence" is discovered. "Clear evidence", according to the Supreme Court's interpretation, must comply with the all the following criteria : (a) it must have been newly discovered or it must have been impossible to submit it at the original trial, (b) the convicted is not himself responsible for the non-discovery or non-submission of the evidence at the original trial, and (c) the evidence must have sufficient probative value for the court to order an acquittal. A witness' testimony does not meet the criteria for "clear evidence". This interpretation by the Supreme Court severely restricts the likelihood that long-term prisoners will be able to obtain a retrial on these grounds. The present requirements for a retrial are generally impossible to meet.

In addition, the statute of limitations on public prosecutions, discussed above, prevents long-term prisoners from securing a court judgment that evidence used to convict them was false or that the police or the prosecution committed offences in the course of their arrest, investigation and trial.

For many years Amnesty International has called for a review of the cases of long-term prisoners who it believes were convicted after unfair trials. These prisoners were convicted in past decades at a time when severe human rights violations were widespread and they have now been left without an effective remedy. They include the following prisoners:

Lee Jang-hyung was arrested in June 1984 under the National Security Law and sentenced, in January 1985, to life imprisonment on charges of espionage. His sentence was finalized by the Supreme Court in September 1985. Lee Jang-hyong was interrogated by the security division of the National Police Administration for 67 days after his arrest, during which time he claims to have been tortured and forced to sign a "confession". At his trial he was represented by a court-appointed lawyer, apparently because his family were under pressure from the authorities at the time not to appoint a human rights lawyer.

In 1993 a group of human rights activists and lawyers formed a support group to try and obtain Lee Jang-hyong's release. In the course of an investigation into his case they found witnesses who could testify that he had in fact been staying in Tokyo at the time when the South Korean authorities claimed he had visited North Korea for espionage training. The political climate in 1984, including intimidation of family and friends of Lee Jang-hyong, meant that no witnesses had came forward to testify on his behalf at the time.

Hwang Tae-kwon, who had his petition on the unconstitutionality of the statute of limitations on public prosecutions rejected in March 1995, was convicted of "espionage" on the basis of his confession which he claims was obtained under torture by the ANSP. Hwang Tae-kwon was arrested on 4 June 1985 and held incommunicado by the ANSP until 5 August. He is serving a sentence of twenty years' imprisonment. He wrote in a letter from prison in 1988:

"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. ...

"The most painful part of my interrogation in the basement cell was when I was forced to admit a visit to North Korea. I was repeatedly tortured by a method they called binyuggopki (barbecue chicken) and with verbal abuse such as 'your life is not worth anything. We may just have to report that you died during interrogation.' I finally capitulated and agreed to allow them to make up a story of my visit to North Korea. ... The following day I told the interrogator that my admission was false and that I was ready to die but could not endure more torture.

"After failing to prove that I had visited North Korea, [my interrogators] were determined to make me a tool of alleged North Korean agent Mr X. This linkage would conclusively prove my contact with North Korea. Mr X is a well-known figure in New York for his activism and his newspaper. If viewing some North Korean videotapes makes one a North Korean agent, there would be thousands and thousands of such agents in the USA. ... I had borrowed one or two videotapes on North Korea from Mr X and had brought him some books from [South] Korea on my previous visit home. But this simple exchange of materials was made to look like espionage activity during the interrogation.

"... The investigator relentlessly demanded that I admit to being Mr X's follower. After at first steadfastly resisting, I had to give in again. The interrogator had me lie flat on the floor and beat me with a bat. After receiving ten or more blows, I stood up with my legs trembling..."

Kim Song-man was arrested at the same time as Hwang Tae-kwon and also held incommunicado for 60 days by the ANSP. In an appeal to the Supreme Court in August 1986 he wrote:

"I am a person who wishes the independence of our nation and democracy. I think that this idea can be realized in a socialistic country. 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 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".

Park Dong-oon was arrested in 1981 and is serving a sentence of life imprisonment. Several members of his family were arrested at the same time; and the last was released in 1988. They have testified that they were tortured into making false statements that Park Dong-oon had visited North Korea to meet his father who had been missing and presumed killed at the beginning of the Korean War (1950-53) and that he had engaged in espionage activities. No evidence was presented at the trial to show that Park Dong-oon's father was alive and was himself a spy who recruited his son. The main evidence was apparently the statements made by Park Dong-oon and his relatives during their interrogation and which they all claim were obtained under torture.

Park Kun-hong, one of Park Dong-oon's brothers wrote in a detailed testimony:

"With the help of endless torture the security department transformed the whole family into spies over 60 days. Instead of catching spies, they were creating spies. ... It turned out that they had dragged my brother [Park Dong-oon] out to the shooting alley at night, shot at him, and dragged him to the Han river bank, and threatened to throw him into the river. They inflicted all kinds of torture on him. All of my family went through humiliation and pain and I cannot find words to describe them. How long do you think a human being can put up with torture? One month, two months or several months? It is only a matter of time. Nobody can endure it forever. ...

"At the time of the trial my whole family resisted stubbornly and finally revealed the tyranny of the security department. Public access to the trial was extremely restricted and there were only a few relatives in the courtroom at the time. The result was a verdict that was entirely based upon and therefore completely identical to our fabricated statements and the written indictment of the prosecuting attorney. Not a single letter was changed."

Ham Ju-myong, arrested on 18 February 1983 was held incommunicado for 60 days by the ANSP and also said that he had been tortured and forced to write a confession. He is serving a 20 year prison sentence for espionage.

Yu Chong-sik, arrested on 2 March 1975, was held incommunicado for one month by the ANSP, during which time he says he was tortured and forced to "confess" that he had spied for North Korea. He did not see a lawyer until his trial began. Yu Chong-sik has been in prison since 1975, serving a life sentence. His remaining sentence was reduced in an amnesty on 15 August 1995.

In some cases the lack of access to legal assistance compounded the difficulties of obtaining redress for long-term political oners. Ahn Hak-sop, aged 65, and Kim Sun-myung, aged 70, had spent over 40 years in prison before their release in August 1995 under a presidential amnesty. They had been unable to obtain any kind of redress, although there was international concern that they had been convicted unfairly. They were convicted by
military courts under the National Defence Act (abolished in 1963) with being North Korean spies. When they were arrested, Ahn in 1953 and Kim in 1951, both were soldiers in the North Korean army. Both deny having been spies. Ahn Hak-sop said that after his capture he was taken to a special police unit in Taegu and beaten. Kim Sun-myung was originally sentenced to 15 years' imprisonment, but was put on trial again in 1953. He said that he was beaten at that time. Former prisoner Lee Chong-whan was arrested in similar circumstances in 1951 and was granted a conditional release in March 1993 when he reached the age of 70. He said that the military courts tried prisoners in groups of 20 to 30, that they were represented by a state-appointed lawyer and that they were not allowed to deny the charges.

Lawyers and human rights groups interested in the fate of Ahn Hak-sop and Kim Sun-myung had been unable to obtain copies of the trial documents, in spite of requests to the Ministry of Justice. In May 1994 a lawyer wishing to act on their behalf visited Taejon Prison where they were held but was told that he could not see them as he did not have the appropriate appointment documents. These were subsequently taken to the prison by a representative of a human rights group for the prisoners' signature, but the prison authorities refused to accept them. The lawyer filed a complaint against the prison authorities over the incident. This was dismissed in November 1994 by the Ministry of Justice on the grounds that the lawyer had an ulterior political motive in wishing to see the prisoners. At the time of the prisoner's release in August 1995, the lawyer had still not obtained access to them.

V) AMNESTY INTERNATIONAL'S RECOMMENDATIONS

1) The National Security Law

•All prisoners held for the non-violent exercise of their rights to freedom of expression and association, regardless of their political views, should be immediately and unconditionally released.

•The Government should introduce legislation to amend the National Security Law so that if conforms fully with provisions relating to freedom of expression and association contained in the International Covenant on Civil and Political Rights and the Constitution of the Republic of Korea. Provisions of the law which punish non-violent political activities should be removed.

•Prosecution authorities should not arrest and bring National Security Law charges against people which are in contradiction to the government's obligations under the Constitution and under international law to protect the rights to freedom of expression and association.

•The courts should ensure that no defendant is convicted under the National Security Law for the peaceful exercise of his/her rights to freedom of expression and association.

•The administrative provisions under which prisoners who have not "converted" are not entitled to early release on parole should cease to be applied to prisoners held for the non-violent expression of their political views.

•In due course the Constitution should be amended so as to expressly recognize the right to freedom of expression.

2) The need for practical steps to safeguard prisoners rights and to protect them from torture and ill-treatment

•Practical steps should be taken to ensure that all prisoners are protected from torture and ill-treatment during interrogation. In all cases prisoners should be informed of their rights at the time of arrest, including their right to see a lawyer and their right to remain silent.

•Anybody who is arrested should be brought promptly before a judge and should be granted immediate and subsequent regular access to lawyers, relatives and independent medical attention. There should be a practical means of ensuring that this occurs in all cases.

•Legal provisions which permit suspects to be held for up to 50 days before charge should be amended. In all cases suspects should either charged promptly with a recognizable offence or released.

•There should be a clear separation between authorities responsible for the detention or suspects and authorities responsible for the interrogation of suspects. Prisoners should be held only in publicly

recognized places of detention and accurate information about the arrest and detention of any person should be made available promptly to relatives, lawyers and the courts.

•The government should ensure that all law enforcement personnel receive adequate training in both domestic and international human rights standards.

•Anyone charged with a criminal offence should be presumed innocent until proven guilty beyond reasonable doubt.

•The authorities should ensure that statements obtained from prisoners as a result of torture and ill-treatment are not admissible and are not admitted in practice, in legal proceedings.

•Authorities responsible for the interrogation of suspects should not be permitted to publicise incriminating information about a suspect or group of suspects before public trial.

3) The right to an effective remedy for victims of human rights violations

•The government should ensure that prisoners are aware of their rights to make a complaint and that there is a realistic chance that they will obtain justice. Legal provisions alone are inadequate without public confidence and a system which works for victims of human rights violations.

•All reports of torture and ill-treatment should be promptly investigated by an impartial and independent body. Investigation should be carried out regardless of whether or not a formal complaint has been made.

•The body responsible for investigation should have the power to obtain all information necessary for the inquiry and to compel those accused of torture and ill-treatment to appear and testify. The working methods and results of all inquiries should be made public.

•Anyone found responsible for inflicting torture and ill-treatment should be brought to justice. All victims should receive fair and adequate compensation.

•The government should take responsibility for finding an effective remedy for the group of political prisoners convicted in previous decades after reported unfair trials. At the very least, there should be an independent review of all such cases where there are reports that the prisoners were held incommunicado, tortured and convicted largely on the basis of coerced confessions.