

Republic of Korea (South Korea)

Open letter to Acting President Goh Kun - Continued use of the draconian National Security Law: Amnesty International's concerns about Professor Song Du-yul's case

1 April 2004

Dear President Goh,

Amnesty International has actively campaigned for human rights in South Korea for many years. We have witnessed positive developments that have enhanced human rights for South Korean citizens. I acknowledge that one of the first acts of your cabinet in April 2003 was to release some long term prisoners of conscience under an official amnesty. However, my concern is that in some areas of human rights, the situation remains unchanged. For example, the continued and arbitrary use of the National Security Law (NSL) has led to an erosion of human rights.

Amnesty International acknowledges that every government has a right to take measures to ensure the security of its citizens. We also appreciate that South Korea has special security concerns with regard to North Korea. However, security concerns should never be used as an excuse to deny people the right to express different political views and to exercise fundamental human rights including the right to freedom of expression as established in international standards including the International Covenant on Civil and Political Rights (ICCPR) to which South Korea is a state party.

Amnesty International is concerned that in South Korea the NSL - which has been in force since 1948 - has been used throughout the years to imprison people for non-violent political activities. The law provides for long sentences or the death penalty for "anti-state" and "espionage" activities, terms that are not clearly defined and have often been used arbitrarily against people peacefully exercising their basic rights to freedom of expression and association. For instance, Article 3 of the NSL provides for "capital punishment or imprisonment for life" for "a person who is engaged in the function of a ringleader" or "a leading member" of an "anti-government organization". According to Article 7 of the law, (under which most arrests are made today) anyone found guilty of "praising" and "benefiting" the enemy (generally meaning North Korea) will receive sentences of up to seven years' imprisonment.

The Human Rights Committee (the expert body established under the ICCPR to monitor states' compliance with the Covenant) in October 1999 considered that "the scope of activities that may be regarded as encouraging 'anti-state organizations' under article 7 of the National Security Law is unreasonably wide." The Committee concluded "that the restrictions placed on freedom of expression do not meet the requirements of article 19, paragraph 3 of the Covenant, as they cannot be regarded as necessary to protect national security."

On 30 April 2004, Professor Song Du-yul, a philosophy professor at Muenster University in Germany, was sentenced to seven years under the NSL by the Seoul District Court. Amnesty International is concerned to find in the case of Professor Song that yet again the NSL has been used to target someone who has exercised his right to freedom of expression in a non-violent manner. Professor Song (59) a naturalised German citizen since 1993, has acted on his beliefs in a non-violent way, as such, Amnesty International considers him to be a prisoner of conscience. The South Korean law under which he is currently indicted fails to meet international human rights standards which require that all criminal offences are defined precisely or clearly so that people understand what conduct is prohibited. Its vaguely worded clauses have been used arbitrarily to criminalize the exercise of freedom of expression.

Under the alias Kim chul-su, Professor Song is accused inter alia; of being a member of North Korea's Korean Workers' Party and its Politburo since meeting with the late North Korean leader Kim Il-sung in 1991; spreading North Korean ideology abroad and visiting North Korea on more than 20 occasions since 1973 on "orders from Pyongyang". The accusation that he was a member of North Korea's Politburo was made by Hwang Jang-yop, (a former Korean Workers' Party secretary who defected to South Korea in 1997) in a book he wrote in 1998. Professor Song always denied this allegation and took Hwang Jang-yop to court. A South Korean court ruled in 2001 that there was no evidence for such an allegation.

Professor Song visited South Korea on 22 September 2003 after 37 years of exile in Germany. He was reportedly invited to South Korea by the Korea Democracy Foundation. Amnesty International has received reports that on the day of Professor Song's arrival, when he passed immigration control at the airport, a high-ranking official of the National Intelligence Service (NIS) approached Professor Song and told him that he had placed 40 agents around the airport and that Professor Song could either follow him directly to the NIS or go there the following morning. He reportedly stated that if Professor Song failed to report to the NIS he would be arrested.

The day after he arrived in South Korea, Professor Song went to the NIS where he was reportedly interrogated by up to ten agents for 13-15 hours a day for four days though he was not detained. After almost three weeks the NIS handed over his case to the prosecution – even though there was reportedly no new evidence for his alleged Politburo membership. On 22 October 2003, Professor Song was taken into custody apparently because of the possibility

he might flee or destroy evidence. During the first few weeks he was interrogated for eight-ten hours a day, he was reportedly handcuffed and his upper arms were tied together with a rope. After protests from the German embassy this ill-treatment did stop. However, contrary to normal practice in South Korea, the prosecution did not allow a lawyer to be present during interrogation.

During the entire interrogation Professor Song's lawyer was not permitted to be present. Even though the Seoul District Court on 31 October ordered that prosecutors allow lawyers to accompany Professor Song during questioning, a decision upheld by the Supreme Court on 1 November 2003 following an appeal by the prosecution.

Amnesty International considers the manner in which Professor Song was interrogated, for long periods by the NIS and the police constitute cruel, inhuman or degrading treatment or punishment and a violation of Article 7 of the ICCPR. Under Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – to which South Korea acceded to in January 1995, the government is also obliged to prevent such treatment. Furthermore, the refusal of the prosecution to allow Professor Song's lawyer to be present during interrogations fails to comply with international fair trial standards. According to Principle 1 of the Basic Principles on the Role of Lawyers and Principle 17 (1) of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, everyone arrested or detained (whether or not on a criminal charge) and everyone facing a criminal charge has the right to the assistance of a lawyer to protect their rights at all stages of criminal proceedings, including interrogations.

Professor Song was indicted on 19 November 2003 for violating Articles 3, 5 and 8 of the NSL namely for "joining an anti-state organisation" and siding with an "enemy benefiting organisation." As mentioned above, Article 3 provides punishment including the death penalty for constituting or joining an "anti-state organization." Article 5 of the NSL stipulates punishment including the death penalty for anyone who provides voluntary assistance with "the intention of assisting an anti-government organization," while Article 8 stipulates punishment for anyone "who makes contact with a member of an anti-government organization or a person who has received an order from it". Prosecutors are reportedly calling for a 15 year prison sentence for Professor Song.

Amnesty International is also concerned at reports that prosecutors allegedly decided to indict Professor Song because he showed few sign of regret over his past actions. The prosecution had reportedly indicated that they would take lenient measures against him if he apologized for his "pro-Pyongyang activities" and made a formal pledge of loyalty to South Korea. This leads to questions of whether Professor Song was being forced to convert his ideology.

Professor Song has reportedly admitted to joining the ruling Korean Workers' Party but has continuously denied acting as a Politburo member. He has publicly stated that he would relinquish his membership of the Korean Workers' Party and abide by South Korean law. Amnesty International is concerned that the reported stance of the prosecution indicates that the "ideology conversion oath" which was abolished under South Korean law in June 1998 still seems to exist in practice. People such as Professor Song who are exercising their rights to freedom of expression are punished for holding ideological beliefs that run counter to those that the South Korean government supports.

In Professor Song's case, his actions from the past as well as academic articles and books have been raised in court. The prosecution states that there is clear evidence that his books are praising North Korea - an act which is punishable under the NSL. Amnesty International is concerned that the NSL has frequently been used as a form of censorship, to imprison people for publishing and distributing material deemed to "benefit" North Korea. This is all the more worrying as Professor Song's work is reportedly publicly available all over South Korea which suggests a level of hypocrisy on behalf of the authorities. The NSL is applied in an arbitrary fashion: while certain left-wing political works are permitted for academic study, possession of or reference to the same works by students or activists with perceived "pro-North Korean" leanings often becomes a criminal offence. Such restrictions on freedom of expression violate Article 19(2) of the ICCPR.

The current use of the NSL also appears to contradict the government's "Peace and Prosperity Policy" of engagement with North Korea. Under this policy the government encourages closer relations with North Korea through initiatives such as dialogue, trade and travel. Conversely, under the NSL people continue to be arrested for merely discussing reunification, publishing socialist or "pro-North Korean" material or having views considered similar to those of the North Korean government.

Amnesty International calls on the government of South Korea to:

- Immediately and unconditionally release Professor Song Du-yul who is detained for having peacefully exercised his right to freedom of expression and association;
- abolish the draconian National Security Law or otherwise amend it to bring it into line with international standards regarding clarity of criminal law, freedom of expression and association;

- ensure prompt and full implementation of international standards to which South Korea is a party which call for the elimination of all cruel, inhuman and degrading treatment or punishment.

I look forward to receiving your responses to these concerns.

Yours sincerely,

For Irene Khan, Secretary General