

£SOUTH KOREA

@The test of practice: the National Security Law and human rights

1. Introduction

Three years ago, South Korea acceded to the International Covenant on Civil and Political Rights (ICCPR). In December 1992, Kim Young-sam was elected president after promising major improvements in the protection of human rights. But as this report goes to press, undertakings by South Korea to safeguard human rights remain unfulfilled in some areas of major importance and the main obstacle to better safeguards, the National Security Law (NSL), remains unamended.

South Korea has made repeated clear commitments to reinforce safeguards for human rights. Following the election of President Kim Young-sam, an amnesty was promulgated on 6 March 1993, resulting in the release of several prisoners of conscience. Another amnesty was announced in late May 1993. There have also been indications that legislation would be tabled before the National Assembly at its next session to amend the NSL.

However, the South Korean Government has given no firm commitment that it will amend the provisions of the NSL which Amnesty International believes have been used to detain prisoners of conscience. Indeed, the government's commitment to amend the NSL at all appears to be uncertain, as indicated by statements made in recent weeks by senior South Korean officials.

In July 1992, the United Nations Human Rights Committee considered a report by the South Korean Government on its implementation of the ICCPR. The Committee praised South Korea for submitting a "well-documented report" containing "detailed information about the laws and regulations relating to the implementation" of the ICCPR and for providing "clear and comprehensive oral replies". However, the Committee noted that:

"[South Korea's] report does not include sufficient information about the implementation of the Covenant in practice and about factors and difficulties which might impede the application of 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 full realization of the rights enshrined in the Covenant . . ."

The text of a UN press release concerning the Human Rights Committee's examination of South Korea's report is reproduced in the appendix to this document. The present document describes Amnesty International's concern about the use of the NSL, recent official statements and why Amnesty International believes the NSL should be amended as a matter of urgency.¹

2. Will the National Security Law be amended?

In November 1992, two months before he was elected president, Kim Young-sam stated that he was opposed to revising the NSL because "North Korea is still intent on toppling our [political] system". More recently, conflicting signals have come from senior officials concerning revision of the NSL.

On 15 March, Deputy Prime Minister and National Unification Minister Han Wan-sang, speaking before the National Assembly's Foreign Affairs and Unification Committee, expressed willingness to "examine the possible replacement of the [National] Security Law with a law on democratic order". According to Han Wan-sang, several provisions of the NSL run counter to the existing agreement between North and South Korea: this, rather than the curbs on basic human rights included in the NSL, was given by Han as the motive for possible revision of the law.

On 2 May, it was reported that members of the ruling Democratic Liberal Party and of the opposition Democratic Party would meet later that month to discuss the formation of a special parliamentary committee to revise a number of laws, including the NSL. However, subsequent press reports indicated that the committee would focus first on reforming laws other than the NSL, such as laws on political parties and public servants.

¹ Amnesty International has published several documents over the past year detailing human rights violations in South Korea, including the use of the NSL. The laws and practices mentioned in these documents are still largely in place and are among those criticized by the UN Human Rights Committee. These should be referred to for further information. These documents include: ♦ *South Korea: Amnesty International's Concerns*, 23 pages, AI Index: ASA 25/14/92, June 1992; ♦ *"Unconverted" Political Prisoners*, 3 pages, AI Index: ASA 25/15/92, July 1992; ♦ *Reported Illegalities and Ill-Treatment in the Latest "Spy" Case*, 9 pages, AI Index: ASA 25/31/92, December 1992; ♦ *South Korea: Open Letter to all Presidential Candidates*, 5 pages, AI Index: ASA 25/33/92, December 1992; ♦ *Prisoner of Conscience Kang Ki-hun*, 5 pages, AI Index: ASA 25/04/93, January 1993; ♦ *Prisoner of Conscience Chang Ki-pyo*, 3 pages, AI Index: ASA 25/11/93, April 1993.

On 3 May, Prime Minister Hwang In-sung stated in the National Assembly that the government had no intention of repealing or revising the NSL. He reportedly indicated that the NSL would remain unchanged as long as the "security situation" on the Korea peninsula remained the same.

Amnesty International is deeply concerned that amendments to the NSL to protect the rights of freedom of expression and association do not appear to be part of the South Korean Government's legislative reform agenda at this time. Amnesty International is aware of the particular situation caused by the division of the Korean peninsula and takes no position of principle on the existence of national security legislation. It is also aware that the ICCPR authorizes restrictions on the exercise of some rights, such as liberty of movement, freedom of expression, peaceful assembly and freedom of association. The ICCPR states that any such restrictions may only be those provided by law and may generally be only those necessary for the protection of national security and public order. Some rights, such as the right to life and the right to freedom of thought, conscience and religion, may never be restricted by State Parties to the ICCPR.

Amnesty International believes that the restrictions to freedom of association and expression included in the NSL are not consistent with the ICCPR. It believes that the restrictions to freedom of expression and association go far beyond those necessitated by the preservation of national security, the maintenance of public order or other legitimate motives specified in the ICCPR and have led to imprisonment of prisoners of conscience.

3. Provisions of the National Security Law used to restrict freedom of expression and association

The NSL provides the death penalty or life imprisonment for those convicted of being "ring leaders" of "anti-state organizations". It provides for the imprisonment of other members and supporters of such organizations. Over the years the NSL has been widely used to imprison people who visited North Korea without government authorization, people who met North Koreans or alleged North Korean agents abroad and people who expressed support for North Korea or whose views were similar to those of the North.

Provisions of the NSL which are of particular concern and have been used to restrict the rights of freedom of expression and association are described briefly below:

Article 2 defines an "anti-state organization" as a group or organization which has been established "for the purpose of assuming a title of the government or disturbing the state". This definition includes the North Korean Government and has also been applied to socialist and dissident groups in South Korea.

Article 3 provides imprisonment of between two years and the death penalty for those who establish or support an "anti-state" organization and has been used to punish any contact with a group or organization deemed to be "anti-state".

Article 4 imposes lengthy prison sentences and the death penalty for acts of treason, espionage or sabotage under instructions from an "anti-state" organization. The vague definition of state secret has been interpreted widely by the courts and people have been convicted under this article of the NSL merely for meeting North Koreans or alleged supporters of North Korea and/or passing information which was not actually classified as state secrets by the government.

Article 6 prohibits unauthorized travel to North Korea and re-entry into South Korea and has been used to imprison people who made unauthorized visits to North Korea, often in a public manner for the purpose of discussing peaceful reunification.

Article 7 punishes those who "praised", "encouraged" or "sided with" North Korea and has been used widely against people who merely expressed socialist views, who criticised government policy and/or whose opinions were considered to be similar to those of the North Korean Government.

Article 8 prohibits meetings and communication with an "anti-state" organization.

Article 10 punishes those who fail to report "anti-state" activities. It has been used, for example, against people who failed to report a colleague's meeting with members of an "anti-state" organization.

The NSL was last amended in May 1991 but not significantly. The definition of "anti-state" organization was altered to require that it be "equipped with a command and control system" and contacts with communist organizations in countries other than North Korea were decriminalized. The clause "with the knowledge that he might endanger the existence, security of the State or the basic order of free democracy" was added to several provisions of the law and the amended law also distinguished between state secrets which involved facts only known to a limited number of people and other state secrets. Amnesty International considered that these amendments were insufficient to prevent abuse of the rights of freedom of expression and association.

4. Prisoners of conscience held under the National Security Law

During 1992 some 270 people were detained under the NSL and over 200 others arrested in previous years remained in prison. On 13 May 1993 the Ministry of Justice reported to the National Assembly that 120 people were wanted for violation of the NSL.

Prisoners of conscience held under the NSL include **Hwang Suk-yong** who was arrested on 27 April 1993 at Seoul Airport solely on account of his unauthorized visit to North Korea in 1989 (he had lived in self-imposed exile abroad since then). He faces a lengthy prison sentence for contacting an "anti-state" organization. Several other prisoners who made similar unauthorized visits have been convicted under the NSL. They include parliamentarian **Suh Kyung-won** who visited North Korea in 1988 and discussed reunification issues with North Korean officials. When delivering its verdict in his case the court found that "the content of Suh Kyung-won's conversation with the North Korean leader Kim Il Sung does not appear to have contained what could be called top secrets vital to national security". Nevertheless, he was found guilty and is now serving a 10-year prison sentence.

Chang Ki-pyo is also a prisoner of conscience. He was sentenced to one year's imprisonment following his arrest in September 1992 for failing to report to the authorities his meetings with an alleged North Korean agent. There was no evidence to suggest that he knowingly met an agent or disclosed state secrets. Another prisoner of conscience **Kim Nak-jung** was arrested for association with the same alleged agent and was given a life sentence in February 1993, although the content of his discussions with North Koreans concerned reunification issues and was not proved to have been harmful to state security.

Several members of socialist groups are serving sentences of up to life imprisonment under the NSL for forming or belonging to "anti-state" organizations. One recent prisoner of conscience case is that of **Choi Il-bung** who belonged to a group called International Socialists. He was sentenced to two years' imprisonment in January 1993 solely for publishing socialist books and articles and for expressing his socialist ("anti-state") views.

5. Conclusion and recommendation

Amnesty International takes no position of principle on the existence of national security legislation, but calls for such legislation to be brought fully into line with international standards. In July 1992 the Human Rights Committee found that some provisions of the current NSL contravene the ICCPR and prevent its full implementation in South Korea. Amnesty International has documented a clear pattern of imprisonment of prisoners of conscience under the NSL, merely for the non-violent exercise of their rights of freedom of expression and association. In spite of President Kim Young-sam's stated commitment to greater freedom and democracy, prisoners continue to be held under provisions of the NSL which violate their fundamental rights.

Amnesty International believes the NSL should be amended immediately in order to bring it fully into line with the ICCPR and other international human rights standards and to prevent the arrest and imprisonment of prisoners of conscience. It is therefore urging the South Korean Government to draft amendments to the NSL as a matter of priority, to make the draft amendments public and to submit them for discussion at the next National Assembly session.