

Republic of Korea (South Korea)

Open Letter to newly elected Members of the 17th National Assembly: a historic opportunity to consolidate human rights gains

Dear Speaker Kim One-ki,

I write to you – the political parties and the newly elected members of the 17th National Assembly – as you are in the midst of the first session of the National Assembly to commit to improving the human rights situation in South Korea.

Amnesty International believes that as current National Assembly members you have a very important duty to revitalize the efforts of continuing the reform process in South Korea. We have witnessed positive developments that have enhanced human rights for South Korean and they now enjoy many freedoms. In some areas, however, there has been an erosion of human rights; the promise of change has not been fully realized.

In this letter, I am highlighting seven areas of concern where we believe significant or grave human rights violations continue to take place. Amnesty International calls upon each of the National Assembly members and all the political parties that they represent to publicly commit to bringing about change in these following key areas:

(1) The National Security Law (NSL)

The continued and arbitrary use of the National Security Law has led to an erosion of human rights. In April, Amnesty International had written to then Acting President Goh Kun raising our concerns regarding the detention and sentencing of Professor Song Du-yul under the NSL.

Amnesty International is concerned that in South Korea the NSL - which has been in force since 1948 - has been used through the years to imprison people for non-violent political activities. No amendments have yet been introduced to the existing NSL which includes vaguely worded clauses such as Articles 3 and 7 providing for long sentences or the death penalty for “enemy-benefiting” (enemy refers to the Democratic People’s Republic of Korea or North Korea), “anti-state” and “espionage” activities. The NSL fails to meet international standards that require all criminal offences to be defined clearly so that people understand what conduct is prohibited. These clauses were used arbitrarily to indict people who have tried to exercise their basic rights to freedom of expression and association. In April 2004, at least 16 prisoners were reportedly being held under the NSL. The NSL has been used frequently as a form of censorship, to imprison people for publishing and distributing material deemed to “benefit” North Korea. The NSL is applied in an arbitrary fashion - while certain left-wing political works are permitted for academic study, possession or reference to the

same works often become a criminal offence in the hands of a student or activist with perceived "pro-North Korean" leanings.

Amnesty International acknowledges that every government has a right and duty 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.

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 urges members of the 17th National Assembly to:

- repeal or review the National Security Law to bring it into line with international standards regarding clarity of criminal law, freedom of expression and association.

(2) Death Penalty

Amnesty International welcomes the fact that there have been no executions since former President Kim Dae-jung, a former death row prisoner himself, took office in February 1998 and that the present President Roh Moo-hyun has continued to honour this commitment. However as of December 2003, at least 56 prisoners are still believed to be under sentence of death. In 2003, four more people were sentenced to death and there was no case of commutation.

In November 2001, 155 members of the last National Assembly (which consisted of a total of 273 members) supported a bill calling for the abolition of the death penalty. Despite this support which constituted over 56 percent of the National Assembly members, there was no progress in the status of the bill; it appears to have been stalled in the Standing Committee for Judiciary and Legislation of the last National Assembly. The newly elected members of the National Assembly have an important role to play in ensuring that this bill is enacted into legislation.

Amnesty International opposes the death penalty in all cases. The death penalty is a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. It carries the risk of irrevocable error. UN studies have shown that the death penalty has no special deterrent effect.

Amnesty International calls on newly elected members of the 17th National Assembly to support abolition of the death penalty in law. As steps towards its abolition, the members are urged to:

- *expedite passage into legislation of the bill calling for the abolition of the death penalty in the National Assembly;*
- *support commutation of the death sentences of those currently under sentence of death and ensure that the moratorium on executions initiated by former President Kim Dae-jung and supported by President Roh Moo-hyun continues;*
- *support ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at worldwide abolition of the death penalty.*

(3) The Security Surveillance Law

The Security Surveillance Law (enacted in 1989) is used to monitor the activities of certain political prisoners – including those convicted under the NSL on charges of “espionage” and “anti-state” activities.

Human rights groups estimate that hundreds of former political prisoners may be subject to this law, but the exact number is not publicly available. Under the terms of the Security Surveillance Law, released prisoners are required to report their activities regularly to the police. They also face arbitrary restrictions on their activities, such as a ban on meeting other former prisoners subject to the same law or from participating in certain meetings and demonstrations. When these restrictions are broken, they are liable to criminal punishment.

Amnesty International does not dispute the need to maintain security but believes the Security Surveillance Law is applied in an arbitrary and secretive way to threaten and harass former prisoners of conscience and political prisoners who pose no security threat. They include former prisoners who are elderly and suffering from the after-effects of long-term imprisonment and torture. The requirements force them to live under considerable pressure with the constant threat of re-arrest and imprisonment. The Security Surveillance Law has been applied in an arbitrary manner to prevent former political prisoners from fully participating in oppositional activities.

Amnesty International urges newly elected members of the 17th National Assembly to:

- *repeal or review the Security Surveillance Law so that it conforms to international human rights standards and ensure that it is not used arbitrarily or to harass and restrict the activities of former prisoners of conscience and long-term political prisoners.*

(4) Trade Unionists and Migrant workers

(4.1) Actions against striking workers

Amnesty International is concerned at reports that trade union leaders who organized strikes and demonstrations to protect their basic rights were harassed and arrested. In 2003, at least 63 trade unionists were arrested; six trade union leaders committed suicide to highlight the precarious situation of Korean workers. South Korea has not yet ratified International Labour Organization (ILO) Convention 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948) and has also not yet withdrawn its reservation of Article 22 of

the ICCPR relating to freedom of association. Multiple trade unions at enterprise level remain prohibited.

The South Korean government employs vaguely worded clauses such as Article 314 of the Criminal Act (Interference with Business clause) and laws – such as the Law on Assembly and Demonstration – to arrest trade union leaders. This is despite the repeated recommendation by the ILO to the South Korean government to refrain from using the Interference with Business clause to impose criminal punishment on trade union activists.

Amnesty International urges newly elected members of the 17th National Assembly to:

- permit trade unionists and workers to organize and take part in legitimate and non-violent strike action without harassment or arrest, in accordance with their rights under international human rights and labour standards;

- take steps to ensure that trade unionists are able to exercise their rights to freedom of association, in accordance with international labour standards.

(4.2) Migrant workers

In June 2004, at least 120,000 undocumented migrant workers did not, or have not been able, to register with the authorities.¹ Mostly undocumented, migrant workers have provided cheap labour in the so-called "3D" (difficult, dirty and dangerous) jobs. Most of them live in small dormitories, are exposed to poor working conditions, and are at increased risk of industrial accidents. They are also subjected to racial discrimination. They receive unequal wages for rendering the same work in relation to the Korean work force. There are few legal safeguards in place to protect them. Amnesty International has received reports of government crackdowns on protests by migrant workers, and of detained migrant workers being subjected to beatings and verbal abuse at the hands of law-enforcement officials. We have also received information that government authorities have targeted leaders of the migrant workers' unions including the Equality Trade Union – Migrants Branch; at least five leaders were reportedly deported to their countries of origin in 2003 and 2004. Groups defending the rights of migrant workers demand the institution of a work permit system instead of the industrial trainee system; but small business lobby groups oppose this demand.

Amnesty International urges newly elected members of the 17th National Assembly to

- take steps to protect and promote the rights of vulnerable groups such as migrant workers. Members should support measures to ensure that adequate safeguards are in place to protect against the discriminatory treatment of people on the basis of ethnicity, nationality, health or other status;

- encourage the South Korean government to sign and ratify the UN Convention for the Protection of Migrant Workers and Members of Their Families.

¹ According to South Korean government figures, of the more than 300,000 undocumented workers in the country in 2003, some 27,000 have left and 184,000 had been legalised under the Employment Permit System legislation.

(5) Terrorism Prevention Bill (TPB)

A revised TPB was introduced at the National Assembly in October 2003. The bill in its current form contains provisions which directly contravene international human rights treaties to which South Korea is a state party. The bill had no mention about punishments for terrorist suspects, and while it appeared to exclude the inclusion of the death penalty for suspects, there were concerns that the revised TPB increased the powers of the National Intelligence Service – an organization which has had a poor record in transparency and accountability and which in the past had been responsible for some of the worst human rights abuses in South Korea. It also contained vaguely worded clauses such as Article 13 (false reports or spreading wrong information regarding “terrorism”) that could be used to increase surveillance on political activists and allow greater government monitoring of the means of communication used by activists and civil society in general, thus increasing the potential for human rights abuses.

Amnesty International urges newly elected members of the 17th National Assembly to

- ensure that the Terrorism Prevention Bill and other national security measures are in full conformity with international human rights standards;

- avoid enactment of any legislation that would effectively empower an organization such as the National Intelligence Service – an organization with a record of abuse of power and torture – in such a way that could increase the possibility of human rights violations.

(6) Conscientious Objectors

As of June 2004, at least 493 conscientious objectors, mostly Jehovah’s Witnesses, have been detained for their refusal to serve compulsory military service. The government appears to ignore the possibility of introducing alternative civilian service for conscientious objectors. Whilst the detention period appears to have been reduced, criminal records conscientious objectors receive as a result of their imprisonment affects the chances of future employment. In March 2004, Amnesty International condemned the detention of 28-year-old Lim Tae-hoon and recognised him as a prisoner of conscience; he had been detained on 26 February 2004 for refusing to perform military service on grounds of discrimination against gay, bisexual and transsexual persons by the military and because he believes in pacifist ideals. He has called for an expansion of the alternative civilian service to include all those who object to military service due to conscience. He is currently detained at the Seoul Detention Centre. Amnesty International calls for all conscientious objectors to be immediately and unconditionally released.

Amnesty International urges newly elected members of the 17th National Assembly to:

- recognize the right to conscientious objection to military service as a fundamental human right which can be exercised from the very moment it is expressed, as inherently recognized in Article 18 of the Universal Declaration of Human Rights and articulated in Article 18 of the International Covenant on Civil and Political Rights.

(7) Torture and Cruel, Inhuman and Degrading Treatment

Over the years, Amnesty International has received fewer reports of cases of torture and ill treatment in South Korea compared to the past. However, persons detained continue to be ill-treated during police interrogation, demonstrating a need for better safeguards to protect the rights of detainees. In December 2003, the Ministry of Justice announced that it was outlawing consecutive solitary confinement, reducing the maximum period of solitary confinement from two months to one month, and abolishing the use of leather belts to restrain prisoners. Though this was a welcome development, this announcement allows the continued use of long chains and facemasks to discipline prisoners. The guidelines for determining the period of solitary confinement still remain ambiguous. Moreover, the announcement continues to prohibit those detained in disciplinary cells from going out for physical exercise, meeting family and friends, reading books and newspapers and writing letters or petitions. The treatment of detainees, conditions of imprisonment and methods of discipline thus violate international standards including the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which South Korea is a state party.

Amnesty International urges newly elected members of the 17th National Assembly to:

- 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, including introducing these international standards into domestic legislation.

Amnesty International believes that by supporting the recommendations highlighted above, the political parties and newly elected members of the National Assembly can significantly help to ensure human rights for all South Korean citizens. I look forward to receiving your response to the concerns raised.

Yours sincerely,

Irene Khan
Secretary General