

REPUBLIC OF KOREA (SOUTH KOREA) @Concerns Relating to Freedom of Expression and Opinion

SUMMARY

This document contains a summary of Amnesty International's main concerns relating to freedom of expression and opinion in three areas:

- Provisions of the National Security Law which are used to imprison people for the non-violent exercise of their right to freedom of expression;
- The system of ideological "conversion" in which prison authorities put pressure on political prisoners to change their real or imputed political opinion;
- Legislation prohibiting third party intervention in a labour dispute which may be used to imprison of trade union leaders for the non-violent exercise of their right to freedom of expression;

For further information on these and other related subjects, please refer to the list of recent Amnesty International documents, appended to the end of this report.

1) USE OF THE NATIONAL SECURITY LAW TO IMPRISON PEOPLE FOR THE NON-VIOLENT EXERCISE OF THEIR RIGHT TO FREEDOM OF EXPRESSION

The National Security Law is widely used to imprison people for exercising their rights to freedom of expression and association. 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 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.

The National Security Law has been the subject of open debate in recent years. The Korean Bar Association, the Democratic Party (the main opposition party), a number of legal scholars and domestic human rights groups have called for the abolition or

amendment of the National Security Law. In October 1994 Ministry of Justice officials told Amnesty International that the government had no plans to amend the law.

The National Security Law provides the death penalty or life imprisonment for those convicted of being the "ring leaders" of "anti-state organizations". This definition includes the North Korean Government and has also been applied to socialist and dissident groups in South Korea. The law provides shorter terms of imprisonment for members and supporters of "anti-state" organizations and those who "praise" and "encourage" the enemy (North Korea).

In May 1995 there were some 370 political prisoners in South Korea, over 80% of whom were held under the National Security law. Amnesty International is concerned that many of these prisoners are held for the peaceful exercise of their rights to freedom of expression and association.¹

Imprisonment under Article 7 of the National Security Law

Article 7 of the National Security Law ² appears to be the article which is used most frequently to imprison people for exercising their right to freedom of expression. It provides up to seven years' imprisonment for those who "praise", "encourage" and "side with" the enemy (North Korea) "with the knowledge" that he/she might damage state security. In 1994 and 1995 several hundred people, including students, political activists, publishers and academics, were arrested under Article 7 of the National Security Law. Most were accused of forming leftist groups with North Korean sympathies and with distributing pamphlets, books, leaflets and other material containing ideas deemed to be similar or identical to those of the North Korean Government. The rate of arrests increased in July and August 1994 after the death in July 1994 of North Korean President Kim Il Sung, in what appeared to be an attempt to prevent students, dissidents and others from expressing their condolences.

In South Korea prisoners are brought to trial within six months of their arrest. In typical cases, prisoners tried under Article 7 of the National Security Law are sentenced to short prison terms or given a suspended prison sentence and released. Those released after trial have generally spent between three and six months in prison, they face further

¹At the time of writing Amnesty International had investigated the cases of some 100 prisoners currently held under the National Security Law whom it believed to be possible prisoners of conscience or prisoners of conscience, held for the non-violent exercise of their rights to freedom of expression and/or association.

²Article 7 of the National Security Law is appended to the end of this document.

restrictions upon release and have difficulty obtaining employment because of their conviction.

The prisoners whose cases are described below are typical of those arrested recently under Article 7 of the National Security Law. They had not used or advocated violence and were considered by Amnesty International to be prisoners of conscience.

- Kim Mu-yong, 34-year-old history lecturer, was arrested in March 1995 under Article 7 of the National Security Law. He was accused of siding with North Korea through lectures, pamphlets and guided tours dealing with the Korean guerrilla movement in the 1940s and 1950s. At the time of writing he was awaiting trial.
- Ki Seh-moon and Lee Kyung-ryol were arrested in March 1995 under Article 7 of the National Security Law and accused of 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. At the time of writing they were awaiting trial.
- Dozens of people belonging to socialist groups were arrested during 1994 and early 1995. They included nine members of *Saminchong* (Union of Socialist Youth) arrested under Article 7 of the National Security Law in September 1994 on charges of spreading leftist and allegedly pro-North Korean ideology among workers and students. All are believed to have been given suspended prison sentences and released after their trials in early 1995.
- Eight members of a singing troupe, *Heemangsae* (Bird of Hope), arrested in March and April 1994 under Article 7 of the National Security Law, 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. The sentences were suspended following an appeal hearing and they were released during 1994.
- Several publishers were arrested during 1994 for publishing allegedly pro-North Korean books which were already publicly available in South Korea. They included Kim Yon-in, owner of *Heem* Publishing Company, who was arrested in March 1994 under Article 7 of the National Security Law and sentenced to one year's imprisonment.

➤ Dozens of other cases were documented by Amnesty International. (See appended list of documents for further details.)

In an unusual verdict on 6 April 1995 a Seoul appellate court acquitted Lee Chang-bok, a leader of National Alliance for Democracy and Reunification of Korea, who had been sentenced to 10 months' imprisonment under Article 7 of the National Security Law. The judge in this case is reported to have said that "freedom of ideology and expression must be ensured" and that the mere fact of having similar views to those of the North Korean Government, without use or advocacy of violence, did not justify imprisonment. However, such acquittals under the National Security Law are extremely rare. Amnesty International is concerned that in spite of this progressive interpretation of the law, arrests and convictions are likely to continue until the law is amended in line with international standards relating to freedom of expression and association.

Imprisonment under other provisions of National Security Law

Other articles of the National Security Law punish those who organize an "anti-state" organization (Article 3); those who "detect, collect, divulge or transmit state secrets" (Article 4); those who receive money or materials from a member of an "anti-state" organization (Article 5); those who make unauthorized visits to North Korea (Article 6); those who meet or communicate with members of an "anti-state" organization (Article 8); those who fail to report crimes under the National Security Law (Article 10).

In practice these clauses all relate to freedom of expression (and association). For example, under the National Security Law the term "state secret" has been widely interpreted. The courts have differed as to what constitutes a "state secret" and in some cases this has included information which was publicly available in South Korea. Some typical prisoner cases, considered by Amnesty International to be prisoners of conscience, are described below:

- Kim Sam-sok and his sister Kim Un-ju were arrested in September 1993 and accused of contacting and passing "state secrets" to pro-North Korean groups in Japan. These consisted of books, and other written material which were already publicly available in South Korea. Kim Sam-sok's four-year prison sentence has now been confirmed. Kim Un-ju was later released in February 1994 after an appeal court ruled that the material she had given - including copies of *Hankyoreh Shinmun*, a daily newspaper and *Mal* magazine - did not constitute a state secret.
- Hwang Suk-yong was sentenced to eight years' imprisonment in 1993 for making an unauthorized visit to North Korea and passing on information deemed to be "state secrets", although this was information publicly available in South Korea. His

sentence was reduced to six years' imprisonment on appeal but at a further appeal in May 1994 the Supreme Court increased his sentence to seven years' imprisonment. The court said that any information which might benefit North Korea was a "state secret", even if it was already publicly available in South Korea. Hwang Suk-yong was also convicted of receiving money from the North Korean Government (the copyright fee for a film of his book *Jankilsan*) and of "praising" and "encouraging" North Korea in his writings

Many organizations labelled as "anti-state" are merely left-wing political groups seeking political representation.

- Since 1990, members of *Sanomaeng* (Socialist Workers League) have faced arrest and imprisonment as prisoners of conscience for membership of an alleged "anti-state" organization. The authorities claim that this group had attempted to overthrow the government but to Amnesty International's knowledge there was no evidence that the group had used or advocated violence. On the contrary, they appear to have been a left-wing group with political ambitions which the authorities considered to be a threat. The organization's two leaders, Park No-hae and Baik Tae-ung are serving life and 15 year sentences respectively on charges of forming an "anti-state" organization. At the end of 1994 some 40 other members remained in prison, either serving shorter prison terms or awaiting trial.
- Ahn Jae-ku was arrested in June 1994 on charges of forming an "anti-state" organization for the purpose of spying for North Korea. He was sentenced to life imprisonment and 12 other members or alleged members were sentenced to shorter prison terms. However, the organization in question appeared to be a loosely-structured study group formed to study North Korea's *Juche* (self-reliance) philosophy.³ In the absence of any evidence that he had committed espionage, Ahn Jae-ku and others in this case appeared to be held for the non-violent exercise of their rights to freedom of expression and association.

The National Security Law and international bodies

South Korea has been a party to the International Covenant on Civil and Political Rights (ICCPR) since 1990. It has, however, failed to amend the National Security Law in line with

³Juche is the Communist and strongly nationalist philosophy developed by former North Korean leader Kim Il Sung.

Article 19 of the ICCPR which protects the rights to freedom of expression and opinion, as recommended in July 1992 by the United Nations Human Rights Committee:

"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."

Since it was established in 1991, the United Nations Working Group on Arbitrary Detention has considered at least 13 submissions on behalf of individual prisoners held under the National Security Law. Some of these cases are still pending and some of the prisoners were released. In seven cases it has decided that the imprisonment of those concerned was in contravention of Article 19 (and other articles) of the ICCPR and of the Universal Declaration of Human Rights - both of which guarantee the right to freedom of expression. These prisoners are: Kim Song-man (sentenced to life imprisonment), Hwang Tae-kwon (20 years' imprisonment), Chang Ui-gyun (seven years' imprisonment), Hong Keun-soo (18 months' imprisonment), Lee Keun-hee (three years' imprisonment), Choi Chin-sop (three years' imprisonment), and Hwang Suk-yong (seven years' imprisonment). The Working Group published its decision on the cases of Kim Song-man, Hwang Tae-kwon and Chang Ui-gyun in April 1993; on the case of Hong Keun-soo in December 1992 and on the cases of Hwang Suk-yong, Lee Keun-hee and Choi Chin-sop in September 1994. All are still in prison, except for Hong Keun-soo who was released in August 1992 when his 18 month prison sentence expired.

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 believes, however, that the restrictions to freedom of expression and association contained in the National Security Law go far beyond those necessitated by the preservation of national security. Amnesty International is calling for the release of all prisoners held for peacefully exercising their rights to freedom of expression and association. It is calling for the amendment of the National Security Law so that these rights are fully protected, in line with international human rights standards.

2) IDEOLOGICAL "CONVERSION" OF POLITICAL 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 opinion, and 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 permitted to apply for release on parole. This means that "unconverted" prisoners serving life sentences have generally not been considered for release on parole, except on humanitarian grounds, because of their old age.

Prisoners convicted of "espionage" or "anti-state" activities under the National Security Law appear to be those who are required to "convert". Amnesty International does not know how many prisoners have refused to do so, but recent information suggests it includes at least 40 prisoners, and possibly more. 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.

Two "unconverted" prisoners, considered by Amnesty International to be prisoners of conscience, have been held for over 40 years. Kim Sun-myung, aged 70, has been held since 1951 and Ahn Hak-sop, aged 64, has been held since 1953. Because of their refusal to "convert" the two prisoners have not been permitted to apply for release on parole. They have also spent most of their imprisonment in solitary confinement and have only been permitted visits by family members. One of these prisoners, Kim Sun-myung, has only had some six visits in over 40 years of imprisonment. In 1994 a lawyer wishing to act on behalf of the two prisoners in an effort to secure their release, was denied access by the administration of Taejon Prison. To date he has been unable to communicate with the two prisoners, although they have indicated that they would like him to represent them.

Kim Sam-sok, a prisoner of conscience serving a four-year prison term (case described above) in Taejon Prison has also reportedly refused to "convert" and has consequently been prohibited from working or attending a religious service. Some prisoners

held for the non-violent exercise of rights to freedom of expression and association have been denied permission to correspond with friends and supporters, including members of Amnesty International in other countries.

Article 19 of the ICCPR protects the right to freedom of opinion. In July 1992 the United Nations Human Rights Committee, commenting on South Korea's initial report under the ICCPR, said:

"The Committee also considers that the conditions under which prisoners are being re-educated do not constitute rehabilitation in the normal sense of the term and that the amount of coercion utilized in that process could amount to an infringement of the provisions of the Covenant relating to freedom of conscience."

Amnesty International is concerned that prisoners of conscience and possible prisoners of conscience are under pressure to change their real or alleged political opinion. It is particularly concerned that these include prisoners who have refused to "convert" and have consequently been denied the possibility of release on parole. Some have been given very restricted access to the outside world, including lawyers, and have been denied benefits accorded to other prisoners such as the right to attend religious services and to work.

3) PROHIBITION OF "THIRD PARTY INTERVENTION" IN LABOUR DISPUTES

Trade union leaders in South Korea face arrest and imprisonment under legislation which curtails their right to freedom of expression. Article 13-2 of the Labour Dispute Mediation Act and Article 12-2 of the Trade Union Act prohibit a "third party", that is anyone who has no immediate connection with a workplace where a dispute is taking place, from intervening in the dispute⁴. The maximum penalty for violating the prohibition on "third party intervention" is five years' imprisonment under the Labour Dispute Mediation Act. The authorities regard as "third party intervention" advice given to trade union members about their labour rights. In practice this means that trade union leaders live with the constant threat of arrest because many of their ordinary trade union activities are illegal.

In recent years a number of trade union leaders have been arrested for giving support or advice to other trade unions. Trade unions are generally formed at company level and a person outside the company will be regarded as a "third party". Only a legally recognised industrial federation or national body to which the trade union belongs is

⁴The text of Article 13-2 of the Labour Dispute Mediation Act is appended to the end of this document.

permitted to give advice or intervene in a dispute. Members of an unrecognized trade union federation or national body will be regarded as "third parties".⁵

At the time of writing warrants have been issued for the arrests of at least nine trade union leaders for violation of the prohibition on third party intervention. They are currently in hiding.

Trade union leader, Dan Byung-ho has been wanted since July 1993 on charges of supporting a strike at Hyundai Heavy Industry. In June 1994 the authorities issued arrest warrants for Kwon Young-kil, and Yang Kyu-heon, co-Presidents of the Korean Council of Trade Unions (KCTU) a new national trade union body which is illegal because the FKTU is the only recognized national trade union. The two leaders are accused of violating the prohibition on third party intervention. The charges against them relate to the content of their speeches at a series of rallies in May and June 1994 in which they advised workers about industrial action, expressed support for striking workers and criticised government policy, including the arrests of striking railway workers. To Amnesty International's knowledge they did not incite or advocate violence and would be considered as prisoners of conscience if arrested. (Although in some cases, strike action did result in violence this appears to have been a result of clashes between workers and riot policemen who were attempting to arrest striking workers or to break up a strike.)

In pursuing these and other leaders, the authorities appear to be attempting to hamper the establishment of the KCTU, a new and potentially influential trade union federation. The KCTU's preparatory committee comprises some 420,000 workers from some 1,500 trade unions who are planning to establish the KCTU as a trade union federation by November 1995. Issuing arrest warrants for key leaders, now in hiding, on charges of third party intervention in labour disputes is an obvious impediment to the KCTU's preparatory work.

In March 1993 the International Labour Organization (ILO) Committee on Freedom of Association made a series of recommendations to the South Korean government which included a recommendation on this issue. The Committee stated:

⁵South Korea's Trade Union Law, under Article 3, forbids the establishment of a second trade union at one workplace "when the organization has the same organizational object as an existing labour union, or it aims to interfere with a normal operation of such a union". This prohibition extends to trade union federations. At the national level the Federation of Korean Trade Unions (FKTU) is the only legally recognized national trade union body.

"As the Committee is of the opinion that the ban on third party intervention in the settlement of disputes constitutes a serious restriction on the free function of trade unions, it calls on the Government to repeal this ban".

Amnesty International urges the government to ensure that legislation prohibiting third party intervention is revised to prevent the arrest and imprisonment of trade unionists for giving advice about legitimate trade union activities.

APPENDIX 1: SELECTED LEGAL TEXTS

National Security Law, Article 7 (excerpts)

(1): Any person who has, with the knowledge that he might endanger the existence, security of the State or the basic order of free democracy, praised or encouraged or propagandized or sided with the activities of an anti-State organization, its member or a person who had been under instruction from such organization, or who has propagandized, instigated a disturbance of the State, shall be punished by penal servitude for a term not exceeding 7 years.

(3) Any person who has organized an association which purports to commit the actions as stipulated in Paragraph 1 or has participated in such an association, shall be punished by penal servitude for not less than 1 year.

(4) Any person who has, as a member of the association mentioned in Paragraph 3, fabricated or disseminated false facts concerning such matters that might cause social disorder shall be punished by penal servitude for not less than 2 years.

(5) Any person who has, for the purpose of committing the actions as stipulated in Paragraph 1, 3 or 4, produced, imported, duplicated, kept in custody, transported, disseminated, sold or acquired documents, drawings and any other similar means of expression shall be punished by the same penalty as set forth in each paragraph.

Labour Dispute Mediation Act

Article 13-2 (Prohibition of Intervention by a Third Party)

Except for the employees who have a direct employment relationship with the employer, the labour union concerned or other persons duly authorized by laws or decrees, no party shall manipulate, instigate or obstruct the parties concerned with respect to acts of dispute nor intervene with the intent to influence them.

However, in case of a labour union [such] as the general federation or as the industrial federations which the pertinent labour union has joined, they shall not be deemed as a third-party intervention.

Article 45-2 (Penal Provision)

Any person who has violated the provisions of Paragraphs 2 and 3 of Article 12, or Article 13-2 shall be subject to imprisonment for not more than 5 years or to a fine of not more than 100,000,000 won.

APPENDIX 2: SELECTION OF AMNESTY INTERNATIONAL REPORTS AND PRISONER APPEALS

- Human rights violations continue under the new government (ASA 25/08/94), February 1994
- National Security Law used to silence singing troupe (ASA 25/22/94), March 1994
- Appeal for the release of Kim Chin-ju (ASA 25/15/94), March 1994
- Appeal for the release of three publishers (ASA 25/17/94), April 1994
- Death of Kim Il Sung leads to arrests in South Korea (ASA 25/25/94), July 1994
- Professors targeted in latest National Security Law crackdown (ASA 25/26/94), August 1994
- Appeal for the release of Lee Chang-bok and Hwang In-sung (ASA 25/27/94), August 1994
- New Appeal for the release of Kim Sam-sok (ASA 25/30/94), November 1994
- Over 41 years in prison: Two of the world's longest serving prisoners of conscience (ASA 25/31/94), December 1994
- Summary of Amnesty International's concerns (ASA 25/36/94), December 1994
- Prisoners of conscience Ahn Jae-ku and Ahn Young-min (ASA 25/06/95), March 1995
- Appeal for the release of trade union leader Soh Son-won (ASA 25/08/95), March 1995
- Supporters of former prisoner arrested under National Security Law (ASA 25/09/95) March 1995

⁶Copies of these documents have been sent to the UN Special Rapporteur on Freedom of Expression and Opinion.

• *Letters from prisoners and their families (ASA 25/10/95) May 1995*

• *History lecturer arrested under National Security Law (ASA 25/11/95), May 1995*