

Republic of Korea (South Korea)

Summary of Concerns and Recommendations to Candidates for the Presidential Elections in December 2002

Introduction

On 19 December 2002, the citizens of the Republic of Korea (South Korea hereafter) will be voting to elect in a new President. President Kim Dae-jung who assumed office in February 1998 will end his one-term five-year presidency and the President-elect will assume office in February 2003.

The Presidential candidates will be confronting issues such as moving ahead with economic structural changes that Kim Dae-jung's government has been conducting as part of an IMF reform package following the economic crisis in 1997.¹ The candidates also face questions on their visions of inter-Korean relations. As they succeed an administration for which human rights have been an important policy area, they will also be expected to develop policies for carrying the human rights agenda forward.

As a former political prisoner and human rights campaigner, much was expected from President Kim Dae-jung and his government. There has been some progress in the promotion and protection of human rights in South Korea under his administration. For instance, a national human rights commission was established in November 2001² that has committed itself to improving human rights education. Many political prisoners, including most long-

1) Amnesty International recognised the pressures on the Kim Dae-jung government to tackle the serious economic crisis that has beset South Korea since late 1997. Amnesty International had hoped that the government's commitment to tackling the economic crisis would not divert government attention and resources away from human rights protection. The crisis has itself created new human rights violations, depriving many people of their livelihood and demonstrating a need for better institutional protection of all rights, including civil, political, economic and social rights. The crisis has also shown the inter-dependence of all basic rights. Economic hardship has led to public protests that have in turn led to a government crackdown and arrests in violation of the rights to freedom of expression and association.

2) In a report published in 2002, Amnesty International welcomed the establishment of the national human rights commission in November 2001; and made recommendations to the government on the National Human Rights Law. (See *Republic of Korea: Amnesty International's comments on the National Human Rights Commission Act: Towards an Autonomous, Effective National Human Rights Commission*, (AI Index: ASA 25/002/2002, April 2002).

term political prisoners, were released after amnesties. In July 1998, the government announced that political prisoners would no longer be forced to change their political views (known as ideological "conversion") to qualify for early release.³ In November 2001, a bill calling for the abolition of the death penalty was introduced in the National Assembly. The bill received the support of 155 members in the 273 member National Assembly.⁴

Despite these initiatives, there have been few improvements in the human rights situation due in large part to a lack of legislative human rights reform. Between February 1998, when Kim Dae-jung assumed the presidency, and July 2002, over 990 people have reportedly been arrested under the National Security Law. Most have been arrested for the non-violent exercise of their rights to freedom of expression and association. Hundreds of trade unionists have been arrested and/or harassed for exercising their basic labour rights. Some 1,600 conscientious objectors are in prison for refusing to accept compulsory military service. Criminal suspects and prisoners have continued to face ill-treatment by law enforcement officials and further steps are needed to protect vulnerable groups such as migrant workers and asylum-seekers from ill-treatment and denial of a fair and satisfactory refugee determination process by immigration authorities. Censorship has been imposed on gay and lesbian community websites.

This document summarizes Amnesty International's main concerns regarding human rights protection and promotion in South Korea and makes some recommendations to effect improvement. It will be presented to the candidates in the Presidential Elections to be held in December 2002. Amnesty International is calling on all candidates to express their unequivocal commitment to upholding human rights and to clarify the measures they would take to promote and protect them if elected.

Amnesty International does not compare the human rights records of different countries (including those of North and South Korea) and is not singling out South Korea for special criticism. These recommendations are made in the spirit of cooperation and a genuine desire to encourage better human rights protection and awareness in South Korea.

(1) The National Security Law (NSL)

Amnesty International acknowledges that every government has a right to take measures to ensure the security of its citizens. It also appreciates that South Korea has special security concerns with regard to North Korea. But this should not be an excuse or justification for denying people the right to express different political views, in accordance with international human rights standards.

3) It should be noted however that all political prisoners have to sign a "Law Abiding Oath", the Korean Constitutional Court decided in April 2002 that this requirement is constitutional.

4) The Standing Committee on Law and Judiciary of the National Assembly is now discussing the bill calling for abolition of death penalty. There are fears that the Standing Committee, which comprises of former prosecutors and who support retention of death penalty, could delay the passage of the bill.

The NSL, which has been in force since 1948, has been used throughout the years to imprison people for non-violent political activities.⁵ The law provides long sentences or the death penalty for "anti-state" and "espionage" activities but these terms are not clearly defined and have often been used arbitrarily against people whose only crime is to exercise their basic rights to freedom of expression and association. Most arrests today are made under Article 7 of the law that provides sentences of up to seven years' imprisonment for "praising" and "benefiting" the enemy (generally meaning North Korea).⁶

As of October 2002, at least 39 prisoners were reportedly being held under the NSL. Amnesty International believes that many of these prisoners are held because of their non-violent political activities.

The longest serving prisoner under the NSL is Ha Yong-ok who has been sentenced for eight years imprisonment in the National Democratic Revolutionary Party (*Minhyukdang*) case.⁷ Another long term prisoner is Park Kyung-soon, who was sentenced for seven years' imprisonment under Article 7 of the NSL. He was accused of "praising, encouraging the activity of anti-national organizations" in July 1998 as part of the *Youngnam* Committee. He is due to be released in July 2005. Park Kyung-soon is reportedly suffering from a liver ailment.

5) In its concluding observations to the second periodic report of the South Korean government in October 1999, the Human Rights Committee reiterated its "grave concern ... regarding the continued existence and application of the National Security Law." The Committee expressed its concern that the NSL was "also used to establish special rules of detention, interrogation, and substantive liability that are incompatible with various articles of the Covenant (ICCPR), including articles 9, 18 and 19." South Korea has been a state party to the International Covenant for Civil and Political Rights (ICCPR) since April 1990.

6) It is important to note that the Human Rights Committee had also concluded in its observations in October 1999 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 found that "restrictions placed on freedom of expression do not meet the requirements of under Article 19, paragraph 3 of the Covenant, as they cannot be regarded as necessary to protect national security."

7) Based on information reportedly collected from the pocket of a dead North Korean spy inside a sunken North Korean submarine in August 1999, the National Intelligence Service alleged that several university students had established a secret revolutionary group known as the *Minhyukdang*. It was alleged that the *Minhyukdang* operated 'spy activities' with the *Youngnam* Committee (under which Park Kyung-soon is serving a seven year sentence); though no clear evidence to prove this allegation has yet been presented. At least six men including Ha Yong-ok were arrested in 1999 and 2000 and charged under the NSL for "organizing an anti-state group, for helping a North Korean spy and for leaking national secrets." The *Minhyukdang* reportedly adopted the North Korean *Juche* ideology; but there is no evidence that they propagated violence. While the leaders of the *Minhyukdang*, Kim Young-hwan and Cho Yu-sik, were released on bail, its members including Ha Yong-ok have been sentenced to long periods of imprisonment. It has been alleged that Ha Yong-ok was subjected to violence and drugged during interrogation.

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.

In July 2002, Kim Kang-phil, an office worker at an IT company in Busan, was detained in Seoul Detention centre and charged under Article 7 (5) of the NSL for possessing "enemy-benefiting materials" and "for the worship and praise of enemy benefiting/anti-state group." In January 2002, Kim Kang-phil had expressed his support for the North Korean *Juche* ideology in his discussions by email with a well-known scholar. To support his arguments, Kim Kang-phil had referred to some North Korean publications such as *Tong-il Arirang* and *Baek-du san*. In July 2002, Kim Kang-phil was visited by ten officers from the NIS and arrested without a warrant. In September, the Seoul District Court handed him a one-year prison sentence and a one-year suspended sentence. He is appealing against his sentence.

Current use of the National Security Law appears to contradict the government's "sunshine policy" of engagement towards North Korea.⁸ While some people are permitted such contacts, others 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.

Those who have translated or published publications by the Korean-Japanese writer Kim Myung-chul have been detained and prosecuted. Publisher Song Young-hyun, the South Korean publisher of Kim Myung-chul's book, "Kim Jong-il's Reunification Strategy" was

The monthly *Jajuminbo* publisher Lee Chang-ki (34 years old), reporter Park Chun-young (29 years old) and Paek Un-jong (29) were detained at Seoul Detention Centre in October 2001 under Article 7 of the NSL. The National Intelligence Service and the Ministry of Justice accused the three men on vaguely worded grounds that (1) *Jajuminbo*, which was established in August 1999, published articles between April 2000 and October 2001 which threatened "the safety of existence of the state or liberal and democratic order"; and expressed thoughts which "praised, conspired and propagated unpatriotic organization or activities"; (2) of planning to publish writings of pro-North Korean writers who are based outside South Korea; soliciting, exchanging telephone conversations, faxing and meeting with the Korean-Japanese writer Kim Myung-chul and Kim Yun-shin which constituted "anti-state activities". They were released in January 2002 after paying bail of 15 million won (*exchange rate*). Moreover, they were handed suspended sentences for four years each.

8) The "Sunshine Policy" is a pro-engagement policy towards North Korea and includes an emphasis on greater business and civilian links with North Korea, including family contacts, rail and road links, tourist trips and the importation of North Korean literature.

detained at Seoul Detention Centre in November 2000 under Articles 7 and 8 of the National Security Law. He was released on bail in January 2001. A witness in his case, Song Hak-sam, a 56 year old naturalized American citizen of Korean origin, was detained under the National Security Law by the National Intelligence Service in Seoul on 26 February 2001, shortly after giving his testimony. The main charges against Song Hak-sam are reportedly based on (1) his involvement in publishing the Korean translation of Kim Myong-chul's book, "Kim Jong-il's Reunification Strategy"; and (2) his visit to North Korea in October 2000. He was formally charged under the National Security Law in April 2001. Released in July 2001, he was given a suspended sentence of 2 years and six months.

The Korean Constitutional Court declared in April 2002 that the requirement on all political prisoners to sign an "oath" in which they must agree to respect South Korean law (including the NSL) – the "Law Abiding Oath" – is constitutional. This declaration appears to confirm that the oath is a prerequisite for release of the prisoner, which goes against the recommendations made by the UN Human Rights Committee to the South Korean government.⁹ Amnesty International opposes the "Law Abiding Oath" and continues to call for the release of political prisoners who continue to be held solely on account of their refusal to sign an oath requiring them to respect legislation that violates their fundamental rights.

● **Recommendations to the Presidential Candidates**

Amnesty International urges the presidential candidates to

- *support steps to abolish the NSL, or otherwise amend it to bring it into line with international standards regarding clarity of criminal law, freedom of expression and association¹⁰;*
- *give commitments to ensure that complaints about the abuse of the NSL are subjected to independent scrutiny of human rights protection bodies such as the National Human Rights Commission;*
- *review the decision of the Constitutional Court about the constitutionality of the "Law Abiding Oath" and the requirement that all political prisoners have to sign it to secure their early release.*

9) It should be noted that the Human Rights Committee in October 1999 regretted that following the abolition of the "ideology conversion oath" it was replaced by the "law-abidance oath" and concluded that "the "law-abidance oath" imposed on some prisoners, as a condition for their release, should be abolished." In its comments on the concluding observations of the Human Rights Committee, the South Korean government noted its disagreement stating that "the oath is not prerequisite for release, but is to be used as a reference."

10) The UN Human Rights Committee called in its concluding observations in October 1999 to "urgently amend Article 7 so as to make it compatible with the Covenant (ICCPR)."

(2) Death Penalty

Amnesty International welcomes the fact that there have been no executions since President Kim Dae-jung, a former death row prisoner, took office in February 1998. However, at least 53 prisoners, convicted of murder, are still believed to be under sentence of death. The NSL and the proposed Terrorism Prevention Bill provide for the death penalty.¹¹ In November 2001, 155 members of the 273 member National Assembly supported a bill calling for the abolition of the death penalty. Since then, the bill has been submitted to the Standing Committee on Law and Judiciary of the National Assembly for their approval. Despite support from more than half the National Assembly members, the committee appears to have made no decision for more than ten months. The next President will have an important role to play in ensuring that this bill is passed into legislation.

Amnesty International opposes the death penalty in all cases, as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. The death penalty is often inflicted on the poorest members of society and those least able to defend themselves. It does not allow for redress of errors of judgement - the execution of an innocent person can never be put right - and UN studies have shown that the death penalty has no greater deterrent effect on crime than life imprisonment.

• Recommendations to the Presidential Candidates

Amnesty International calls on the presidential candidates to support abolition of the death penalty in law. As steps towards its abolition, the presidential candidates 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 no further executions are carried out.*
- 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 after their release in order to "prevent the danger of their recommitting crime and promote their return to normal sound social life and thereby to maintain national security and social peace."¹²

11) For instance, Articles 3 and 6 of the NSL and Article 19 of the proposed Terrorism Prevention Bill extends the use of the death penalty.

12) Security Surveillance Act, Article 1.

The law applies to certain prisoners who were convicted under the National Security Law 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 subject 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.

- **Recommendations to the Presidential Candidates**

Amnesty International urges the presidential candidates to

- support steps to halt the arbitrary use of the Security Surveillance Law to harass and restrict the activities of former prisoners of conscience and long-term political prisoners.

(4) Rights of workers and trade unionists

Under Kim Dae-jung's presidency, harassment and arrests of trade union leaders who organized strike action and demonstrations to protect their basic rights has continued.¹³ The trade unions were protesting against restructuring leading to mass redundancies, inadequate social welfare provision, failure to prosecute employers engaging in illegal termination of employment contracts and the lack of effective consultation between the government, employers and trade unions. At least 850 trade unionists were detained between February 1998 and October 2002 for their involvement in general strikes and other demonstrations. In October 2002, at least 39 trade unionists were in prison. Between January and October 2002,

13) In February 1998, the National Assembly adopted amendments to South Korea's legislation in fulfilment of conditions for restructuring and labour market flexibility laid down by the IMF. This paved the way for mass redundancies, leading to high unemployment in a country with very little social security provisions. Thousands of workers have lost their jobs in South Korea since the start of the economic crisis, few of whom are covered by unemployment insurance.

at least 165 trade unionists had been arrested. They included trade union leaders charged with calling "illegal" strike action and "obstructing company business".

A number of trade union members were charged in connection with acts of violence that occurred during some strikes and demonstrations. Amnesty International acknowledges that the government has a responsibility to maintain order and control violence. However it appears that most violence during strikes or demonstrations has occurred when disproportionately large numbers of riot police have been deployed to put down the strike or demonstration. For instance, in April 2001, some 3,000 riot police were reportedly deployed at the Daewoo Motors plant in Bupyong to control a sit-in strike by 400 union members who were protesting the dismissal of 1,700 workers.

The police have occasionally appeared to use excessive force, resulting in violence and injury to both unarmed demonstrators and police. In another incident, in June 2000, hundreds of riot police chased striking workers of the Hotel Lotte in Seoul to the 36th floor of the hotel building where they used tear gas to control the strike. At least six policemen and thirty trade unionists were injured, while hundreds were arrested.

There have also been reports that, in a number of cases, the management of some of the companies hired private security agencies to attack striking workers and that the police did not act to stop such violence by private security guards.

Under the Kim Dae-jung administration, labour legislation has been amended to include provisions granting greater, but not complete, freedom of association for trade unionists. Teachers were permitted to form trade unions from July 1999. A second apex trade union, the Korean Confederation of Trade Unions (KCTU), was legally recognised in 2000.

However restrictions on freedom of association continue. 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 government has not recognised the formation of the Korean Association of Government Employees Works Councils, which was established in March 2002 to represent civil servants. Some 178 persons were detained at the inaugural meeting of this so-called "illegal" association; some 47 delegates were charged.

The South Korean government employs vaguely worded clauses such as Article 314 of the Criminal Act (Interference with Business clause)¹⁴ and laws such as the Law on Assembly and Demonstration to arrest trade union leaders. As of July 2002, at least 31 trade unionists have been detained for violating the Interference with Business clause. In 2001, two-thirds of all workers arrested were charged and convicted under the same clause. 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

14) Article 314 of the Criminal Act dealing with "Interference with Business" states "(1) A person who interferes with the business of another ... by the threat of force, shall be punished by imprisonment for not more than five years or by a fine not exceeding fifteen million won."

union activists. In May 2002, Amnesty International called for the release of trade union leader Dan Byung-ho who was arrested in September 2001 and who is appealing against his two-year sentence after being charged with violating the Interference with Business clause of the Criminal Act and the Anti-Demonstration Law.

- **Recommendations to the Presidential Candidates**

Amnesty International urges the presidential candidates 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;*

- *give a commitment to ratify ILO Convention 87, support the withdrawal of South Korea's reservation in respect of Article 22 of the ICCPR and take steps to ensure that trade unionists are able to exercise their rights to freedom of association, in accordance with international labour standards.*

(5) Conscientious Objectors

There are about 1,600 conscientious objectors in prison, most of whom are Jehovah's Witnesses.¹⁵ Every year, about 500 men refuse to accept military conscription and are detained. There has been a recent trend of conscientious objectors objecting to compulsory military service to express their "pacific ideals". For instance, Lim Chi-yun and Yoo Ho-geun declared their objection to military service on grounds of their ideals and refused to follow the conscription order in July 2002. Oh Tae-yang refused to join the military service as he felt it contradicted his beliefs as a Buddhist.

Every South Korean male has to undergo compulsory military service between the ages of 18 to 28; the military service lasts for up to 26 months. Though the freedom of conscience is guaranteed by the Constitution, refusal to serve the military conscription or refusal to take lethal weapons during military training on the basis of one's faith and belief is a criminal offence in South Korea. Those who refuse to comply with conscription are tried by civil courts for violation of the conscription law. Those tried in civil courts used to receive a maximum sentence of three years; though recently there has been a reduction of the

15) Amnesty International considers a conscientious objector to be any person liable to compulsory recruitment (conscription) for military service or registration for conscription to military service who refuses to serve in the armed forces or any other direct or indirect participation in wars or armed conflicts for reasons of conscience or profound conviction. Conscientious objection also extends to individuals who have already been conscripted into military service, as well as volunteer soldiers serving in professional armies who have developed a conscientious objection after joining the armed forces. Wherever such a person is detained or imprisoned solely because they have been refused their right to register an objection or to perform a genuinely civilian alternative service, Amnesty International will adopt that person as a prisoner of conscience.

punishment to two years and in some cases up to 18 months of imprisonment. Those who refuse to participate in military training after being conscripted are tried in a military criminal court for mutiny; they are usually sentenced to three years' imprisonment. Conscientious objectors have been punished in South Korea for the last 60 years.

- **Recommendations to the Presidential Candidates**

Amnesty International urges the presidential candidates 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.*

- *support introduction of alternative civilian service that is of no longer than the military service.*

(6) Censorship of the Gay and Lesbian community

Amnesty International has received reports that the Ministry of Information and Communication (MIC) of South Korea had adopted an internet content rating system classifying gay and lesbian websites in South Korea as “harmful media” and enforced their censorship under the guise of “protecting youth”. In April 2001, the Information and Communication Ethics Committee classified homosexuality within the category of “obscenity and perversion” in its “Criteria for Indecent Internet Sites”. The enforcement is based on the Youth Protection Law that designates homosexuality as a harmful influence to youth. Article 8 of the Youth Protection Act includes within its “deliberation standard” of harmful media the following:

To describe bestiality or the commission of adultery by mixed couples of men and women, incest, homosexual love, abnormal acts such as sadism/masochism, sex mania, acts of prostitution, and other forms of sexual intercourse (are) frowned upon from the point of view of society in general.

Amnesty International opposes the conflation of consensual same-sex sexual relations with sexual abuse and would consider anyone imprisoned solely on grounds of their sexual orientation to be a prisoner of conscience.

The online censorship law was passed on 1 November 2001; the same day, the owner of the first and biggest gay website in Korea (exzone.com) received a notice stating that if the website did not immediately mark itself as a “harmful site” and install filtering software to prevent youth access, he would be fined approximately US\$10,000 or two years' imprisonment.

Amnesty International considers the blanket censorship of gay and lesbian websites as a violation of the fundamental human rights of individuals to be protected against all forms of discrimination, as guaranteed by the South Korean Constitution. Article 10 of the South Korean Constitution states that “All citizens are assured of human worth and dignity and have the right to pursue happiness. It is the duty of the State to confirm and guarantee the

fundamental and inviolable human rights of individuals.” The censorship also violates freedom of expression guaranteed under Article 19 of the ICCPR to which the South Korean government is a signatory. Moreover it violates freedom from discrimination guaranteed under Article 2 of the ICCPR.

- **Recommendations to the Presidential Candidates**

- to safeguard the fundamental human rights of individuals to be protected against all forms of discrimination, including discrimination based on sexual orientation, as guaranteed by the Korean Constitution and the right to freedom of expression in accordance with Korea's obligations under international human rights laws and treaties.

(7) Torture and Cruel, Inhuman and Degrading Treatment

In recent years, Amnesty International has received information regarding fewer cases of torture and ill treatment than in past decades. However, criminal and political suspects continue to be ill-treated during police interrogation, demonstrating a need for better safeguards to protect the rights of detainees. Conditions of imprisonment fall below international standards in several respects, including the provision of medical care.

(7.1) Ill-treatment by police and other law-enforcement officials

Reports from detainees held by the police indicate a pattern of ill-treatment where detainees are deprived of sleep for several days, questioned throughout the night, threatened and sometimes beaten. There is still a pattern of abuse in which suspects are detained without an arrest warrant and are not allowed prompt communication with their family. This results in many detainees being held incommunicado after their arrest, when they are vulnerable to police ill-treatment. Detainees may be held for up to 30 days' questioning by police and prosecution officials before indictment. Under some provisions of the National Security Law this may be extended to 50 days. Amnesty International believes this long period of detention for interrogation purposes facilitates the use of ill-treatment to extract confessions.

Death row prisoners are reportedly handcuffed at all times during their first year of detention.

Human rights groups report that many victims do not complain against ill-treatment, for fear of reprisals or lack of confidence in the system. In some prisons and detention centres, prisoners have been held in handcuffs and chains and placed in solitary confinement for up to two months as punishment for breaking prison rules. There is no independent inspector of prisons in South Korea.

(7.2) Conditions of imprisonment

Conditions of imprisonment fall below international standards in several areas. Under the current presidency, there have undoubtedly been improvements as political prisoners have better contact with other prisoners and outside visitors.

Medical facilities in prisons and detention centres are poor and detention centres suffer from a shortage of medical doctors. Prisoners are not guaranteed a medical check up; there appears to be inadequate medical treatment; prisoners have reportedly experienced great difficulty – sometimes fatally - in obtaining timely and appropriate medical treatment for their illnesses.

Though there are plans to modernise prisons, there are several detention centres where prison cells are unheated in winter and lack proper ventilation in the summer. Of the 43 correctional facilities, only 12 correctional facilities had been fitted with heating systems.

A recent case highlighting medical problems in Korean prisons is that of Cho Sun-won who was detained in Seoul Detention Centre in November 2001. He appealed repeatedly to the police complaining of pain and back-ache. He could not eat as the pain worsened; however the detention centre stated that the centre only provided medicine for cold and diarrhoea. Cho Sun-won's illness deteriorated; and he died in January 2002, some 8 hours after he was admitted to a hospital.

Park Myung-won was suffering from pulmonary tuberculosis when he was detained in Suwon Detention Centre in November 2001. Despite appeals from his cell-mates who had seen his condition and feared about possible infection, prison authorities delayed transfer to a hospital. He was finally transferred to a hospital in a critical state and is now considered brain-dead.

• Recommendations to the Presidential Candidates

Amnesty International urges the candidates to support

- *amendment of legislation which permits suspects to be held for 30 or 50 days without charge. Suspects should either be charged promptly with a recognizably criminal offence or released;*
- *new legislation to make incommunicado detention illegal, and to ensure access of doctors and lawyers to detainees and prisoners;*
- *improvement in conditions of imprisonment so that they conform to international human rights standards including the Standard Minimum Rules for the Treatment of Prisoners, with particular attention to the provision of medical care. Instruments of restraint such as handcuffs should not be applied as a punishment and chains should never be used;*
- *a South Korean declaration under Article 22 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), recognizing the competence of the UN Committee against Torture to receive individual complaints;*

- provision for the NHRC to make unannounced inspections of detention centres and places of imprisonment, and for civil society groups to have access to such places of detention..

(8) Protection of Vulnerable groups

Migrant workers and asylum seekers are two of the most vulnerable groups in South Korea. Presidential candidates can take a lead to protect them. Migrant workers have been detained and ill-treated by immigration officials. Due to the apparent weaknesses in South Korea's refugee determination procedures, asylum seekers may be forced to return to countries where they face serious human rights violations.

(8.1) Migrant workers

As of December 2001, there were reportedly over 300,000 migrant workers in Korea. Only a third of these workers legally stayed in the country.

More than 90 per cent of foreign workers enter Korea as “industrial trainees”. Industrial trainees are not considered to be workers and are denied workers’ rights. They are underpaid. Most migrant workers are in debt as they pay a large commission to brokers to go to Korea. Mostly undocumented, migrant workers have provided cheap labour in the so-called “3D industries” (difficult, dirty and dangerous jobs). Most of them live in small dormitories, are exposed to poor working conditions, and are at risk of industrial accidents. They are also subjected to racial discrimination. There are few legal supports in place to protect them. Amnesty International has received reports of recent 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.

<p>On 2 September 2002 early morning, Mohammed Bidduth and Kabir Uddin were among 13 Bangladeshi migrant workers who were reportedly arrested at their house in Songseng Industrial Zone in Masok District by some nine immigration officials and 30 police authorities. They were forcibly taken to the Namyang-ju police station; some were still in their sleeping clothes and many were not wearing any footwear. They were questioned about their role in the rally organized by members of the Equality Trade Union-Migrants Branch between April to July. Kabir and Biddhut, who were two of the leaders of the rally, were reportedly beaten up. The two men are detained in Hwasu Detention Centre in Suwon.</p>

Amnesty International has also received reports that in an earlier nationwide crackdown by government authorities including the Ministry of Justice, the NIS, and the National Police Agency in June 2002, some 2,000 undocumented migrant workers were arrested and detained.

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.

(8.2) Asylum-seekers

In December 1992 South Korea became a party to the UN Convention relating to the Status of Refugees (Refugee Convention). The Refugee Convention, like the Convention against Torture to which South Korea has also been a party since January 1995, sets out the principle of *non refoulement* which forbids any state from returning a person to a country where he or she might be at risk of serious human rights abuses. Implicit in this obligation is the establishment of adequate procedures to identify all those persons who may be at risk and are in need of protection, as well as unhindered access to these procedures. But refugee recognition procedures in South Korea appear to fall short of international standards, and officials responsible for handling refugee claims do not seem to be adequately trained.

Amnesty International has received recent reports from asylum-seekers and lawyers that immigration officials have discouraged people from lodging a claim for refugee status, and have sometimes refused to register applications. People who did manage to lodge an application have not been given adequate information about the procedures to be followed. Furthermore immigration officials are reportedly not familiar with the principles of refugee recognition. In some cases immigration officials appear to have placed an undue burden on applicants to provide full documentation in support of their cases and have not employed interpreters. This gives rise to concerns regarding the adequacy of the training immigration officials receive on handling refugee cases. Applicants for refugee status are not entitled to legal aid, and are generally unable to obtain financial assistance for living costs.

Amnesty International is concerned that asylum seekers may be unable to access the refugee determination procedures or appeal the decision to deport them and that those deported may include people who will be subject to human rights abuses in their own country.

• Recommendations to the presidential candidates

Amnesty International urges the presidential candidates to take steps to protect and promote the rights of vulnerable groups such as migrant workers and asylum-seekers. The candidates should support measures to

- *ensure that adequate safeguards are in place to protect against the discriminatory deportation of people on the basis of ethnicity, nationality, health or other status;*
- *sign and ratify the UN Convention for the Protection of Migrant Workers and Members of Their Families;*
- *implement their obligations under international refugee law and human rights law by setting up a system for determining refugee status in a fair and satisfactory manner, including by ensuring that all government officials have sufficient training in international human rights and refugee law standards..*

(9) The National Human Rights Commission (NHRC)

Amnesty International welcomed the inauguration of the NHRC in November 2001 as an important step in the monitoring of human rights violations and in reporting and addressing these violations. By doing so, it is hoped that the NHRC will contribute to increasing protection of human rights and awareness of human rights in South Korea.¹⁶ To achieve this, the NHRC should be provided with adequate funding and resources in order for it to be able to fully carry out, without restrictions and limitations, the aims and functions set out within the mandate. To achieve autonomy and credibility and ensure the independence of the NHRC, it is important that the method of selection and appointment of the members of the NHRC is fair and transparent.

- **Recommendation to the Presidential Candidates**

The candidates are urged to ensure that the NHRC remain autonomous, credible and effective.

(10) Investigations into past human rights violations

The Presidential Truth Commission on Suspicious Deaths was established in October 2000 to address the important issue of “finding the truth on Suspicious Deaths that occurred in relation to the Democratization Movement against past authoritarian regimes.”¹⁷ However, its tenure for two years, ending in October 2002, appears to be inadequate. The establishment of this commission was an unprecedented initiative as there had been no effective and independent investigation into past human rights violations in South Korea. Such investigations are important for the victims and their families and can provide valuable lessons for future human rights protection. It also sends a message to state officials that they cannot abuse human rights with impunity. Human rights organizations, victims and their families have repeatedly called for investigations into many individual cases of torture, unfair trial and imprisonment under past military governments in power until the late 1980s.

For many years Amnesty International has called on South Korea to order effective, independent and impartial investigations into past human rights violations and on this basis to bring prosecutions which respect the right to a fair trial, and do not lead to the imposition of the death penalty or any other cruel, inhuman or degrading treatment or punishment. Whatever the political sensitivities, the organization reiterates its concern that South Korea should find a comprehensive way of addressing past violations, as a means of bringing justice

16) For more details, please refer *Republic of Korea: Amnesty International’s comments on the National Human Rights Commission Act: Towards an Autonomous, Effective National Human Rights Commission* (ASA 25/002/2002), p.1.

17) *Special Act to Find the Truth on Suspicious Deaths*, December 1999, Article 1.

and reparation to the victims and their families and of providing a solid foundation for future human rights protection.

• Recommendations to the Presidential Candidates

Amnesty International calls on the presidential candidates to

- promote the need to find an effective means of investigating past human rights violations; for instance, the presidential candidates could make a commitment to extend the tenure of the Presidential Truth Commission on Suspicious Deaths so that it can adequately address its mandate.

- officially acknowledge the reports of the Presidential Truth Commission on Suspicious Deaths and take further actions to bring those responsible for committing human rights violations such as torture and ill-treatment to justice;

- ensure that South Korea becomes a signatory to the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and ensure prompt and impartial investigations into gross human rights violations committed in the past;

- state their commitment to provide help to victims of torture or other human rights violations who are in need of medical or other health assistance; take steps to create and contribute to a fund to pay compensation to victims and their families.

(11) International Criminal Court (ICC)

South Korea signed the Rome Statute of the International Criminal Court in March 2000. After signing, the South Korean Ambassador to the UN Lee Si-young said that South Korea would “ratify the Statute immediately.”¹⁸ However, South Korea has yet to ratify the Rome Statute. In a symposium organized by NGOs in July 2002 to celebrate the entry into force of the Rome Statute, officials from the Ministry of Justice and the Ministry of Foreign Affairs and Trade expressed willingness for South Korea to become party to the ICC as early as the end of 2002. The process of granting consent to the ratification in the National Assembly is likely to face many difficulties.¹⁹

18) Minbyun – Lawyers for a Democratic Society, “Update on Ratification Status of the Republic of Korea: Paper prepared for the 10th Preparatory Commission for the International Criminal Court July 1-12, 2002”, p.1.

19) The impending presidential elections in December; the minority status of the ruling party in the National Assembly; the position of the US against joining the ICC are some of the potential obstacles that could affect the emergence of a consensus supporting the National Assembly’s consent to South Korea becoming a state party to the ICC. There are also legal obstacles: a provision in the Korean constitution that the President shall not be charged with a criminal offence during his/her term in office except for insurrection or treason; this provision is contradictory to Article 27(1) of the Rome Statute. Moreover, the South Korean government has not made up its mind as to whether in implementing the Rome Statute as a State Party, it should make a single special legislation that covers every aspect of implementation or amend all relevant aspects of the existing legislation, such as the Criminal Act,

- **Recommendations to the Presidential Candidates**

By joining the international effort to end impunity for the worst crimes known to humanity, South Korea can send a strong signal of its respect of peace and human rights. The Presidential candidates are urged to

- *give support to the ratification by South Korea of the Rome Statute;*
- *encourage the prompt passage of legislation giving the consent of the National Assembly to the ratification process.*

(12) Terrorism Prevention Bill

On 12 November 2001, the National Intelligence Service (NIS) announced that the South Korean government was proposing to enact the Terrorism Prevention Bill. The proposed Bill contains many provisions which appear to be open to abuse by law enforcement officials, but fails to provide adequate safeguards against such abuse.

The Bill enlarges the scope of the death penalty. Article 19 of the proposed Bill makes the offence of being the leader of a “terrorist”²⁰ organization punishable with death or life imprisonment. International human rights bodies have encouraged the abolition of the death penalty. For example, the UN Commission on Human Rights has called on all states that maintain the death penalty to “progressively restrict the number of offences for which the death penalty may be imposed; to establish a moratorium on executions, with a view to completely abolishing the death penalty.”²¹

The Bill contains provisions that could effectively increase the powers of the NIS²², making it less accountable for its conduct. Article 5 of the Bill provides for the

Criminal Procedure Act, Extradition Act, among other laws.

20) “Terror” is defined to mean “actions ... which are intentionally performed by an individual or group who has political, religious, ideological or national purposes, in order to achieve the purpose or to announce the belief or opinion broadly; and which affect national security or diplomatic relationship, or cause important social unrest. (a) The violence, injury, abduction, arrest, detention or murder of nationally important persons, eminent people from various fields, important foreigners and diplomats resident in Korea in accordance with presidential decree; (b) The arson or explosion of important national institutions, Korean diplomatic installations abroad, diplomatic installations resident in Korea and public facilities; (c) The hijacking or explosion of the means of transportation like airplanes, ships and vehicles; (d) The indiscriminate killings of humans using explosives, firearms and other forms of weapons; or the threat of doing so; (e) The leakage or spread of injurious biochemical or radioactive matter for the purpose of massive killing of human lives and animals; or the threat of doing so ” (Unofficial Translation of the Terrorism Prevention Bill, Chapter 1, Article 2)

21) E/CN.4/RES/2000/65, April 2000; E/CN.4/RES/2001/68, April 2001 as quoted in *Rights at Risk: Amnesty International’s concerns regarding security legislation and law enforcement measures* (AI Index: ACT 30/001/2002)

22) In its report *Republic of Korea: Amnesty International calls for prisoner releases and a halt to*

creation of an Anti-Terrorism Centre under the NIS to implement the Bill.²³ The Bill provides the Director General of the NIS with powers to decide the organization and number of the Anti Terrorism Centre with the chair of a National Anti Terrorism Countermeasure Council; information that would be denied to the public. The NIS is a secretive agency about which Amnesty International has in the past expressed concern because of its responsibility for some of the most serious human rights violations.

The South Korean government appears to have avoided expert advice and public debate in drafting of the proposed Bill. The government did not take into account recommendations of the NHRC that specifically stated that the preconditions claimed by the government justifying the creation of the Bill did not exist.

As the proposed Terrorism Prevention Bill contains provisions calling for death penalty, and calling for the implementation of the Anti Terrorism Centre under a secretive organization like the NIS, it appears to be incompatible with international human rights treaties, particularly the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Convention against Torture).²⁴

• Recommendations to the Presidential Candidates

Amnesty International urges the presidential candidates to

- support steps to ensure that the Terrorism Prevention Bill and other national security measures are in full conformity with international human rights standards;
- oppose the extension of the death penalty.

National Security Law arrests (AI Index: ASA 25/022/1998), Amnesty International called for the release of at least 15 long-term political prisoners who were convicted unfairly and on politically motivated charges during the 1970s and 1980s, most of whom were sentenced to life imprisonment under the National Security Law on charges of spying for North Korea. The organization stated that “(t)heir cases follow a consistent pattern of illegal arrest, incommunicado detention, torture and coerced confessions, mostly carried out by the Agency for National Security Planning” (ANSP, later renamed as the NIS). Hwang Tae-kwon, a former prisoner of conscience had stated in a letter that “(a)fter 60 days of torture and beatings in the basement of the Agency of National Security Planning and after three years of imprisonment for a crime that I did not commit, having been silenced all these years, I hope my story will expose the crimes that were committed against me by the powers-that-be in order to extract my “confession”. (Quoted from *Republic of Korea: Hidden Victims: the long-term political prisoners* (AI Index: ASA 25/023/1997)).

23) Article 5 states that regarding “anti terrorism activities, the Anti Terrorism Centre which consists of civil servants from concerned agencies, is established at National Intelligence Service.” The Centre will implement the following tasks: “1. The detection of signs of terrorism; 2. Collection, production and distribution of domestic or foreign information related with terrorism; 3. Planning, direction and coordination of anti terrorism activities; 4. Support to Terrorism Countermeasure Head Offices of each field”; 5. Cooperation for information related with terrorism with foreign intelligence agencies.” (Unofficial translation of the Terrorism Prevention Bill)

24) South Korea has been a state party to the ICCPR since April 1990; to Convention against Torture since January 1995 and the 1951 Refugee Convention since December 1992.