

inherent limits and rouse anti-State activities i.e. agitation of violent revolution or assertion of overthrowing the free and democratic system. Therefore, the above Article does not constitute an infringement upon the freedom of expression.

150. It was pointed out that the objectives of the National Security Law could be achieved under the crime of espionage, etc., of the Criminal Code, if the National Security Law were to be abolished. However, the present system of law of the Republic of Korea, starting from the Constitution (Article 3), does not consider North Korea as a State, so the crime of spying in the Criminal Code involving an 'enemy country' is not applicable, making a special law called the National Security Law necessary.

North Korea has persistently adhered to the communization of the Republic of Korea based on revolutionary ideas of so-called 'single Chosun' in the covenant of its Labour Party and Socialist Constitution. The National Security Law is a special law in force that is a minimum legal instrument required to safeguard the national security against the strategies by North Korea.

## Article 20

### **Stipulation of the Constitution and laws on the pursuit of peace and the prevention of war**

151. The Constitution is based on the ideal of the pursuit of peace. To realize this goal, "the mission of ... peaceful unification of our homeland" is emphasized and the will to "contribute to lasting world peace and the common prosperity of mankind" is expressed in the preamble of the Constitution. Article 5, paragraph 1 of the Constitution also provides that



“the Republic of Korea shall endeavor to maintain international peace and shall renounce all aggressive wars.”

A person who agitates or propagates to commence hostilities against the Republic of Korea in conspiracy with a foreign country or to spy for an enemy country is punished under Article 101, paragraph 2 of the Criminal Code. A person who propagates war between other states in violation of neutrality orders is punished under Article 112 of the Criminal Code.

### **Efforts of the Republic of Korea in pursuit of peaceful unification under the particular circumstances in South-North relations**

152. The Republic of Korea, unlike other nations, has greatly suffered from division. To overcome this reality, the Republic of Korea has set unification as the ultimate national task and has consistently pursued the principle of peaceful unification founded upon the basic order of free democracy. Article 4 of the Constitution stipulates that “the Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on a free democratic order.” Article 66, paragraph 3 states that “the President shall have the duty to faithfully pursue the peaceful unification of the homeland.” The nation’s resolve toward peaceful unification is also declared in Article 92, paragraph 1, which provides that “an Advisory Council on Democratic and Peaceful Unification may be established to advise the President on the formulation of peaceful unification policy.”

153. The Government has made endless efforts toward peaceful unification. On 1 August 1990, the Law on Exchange and Cooperation between the South and the North was enacted to regulate traffic, trade, cooperative projects, and provisions for communication services between the South and the North. The foundation for peaceful unification was strengthened with



simultaneous accession of both sides to the United Nations in September 1991. On 19 February 1992, the Agreement on Reconciliation, Nonaggression, Exchange and Cooperation between the South and the North was reached. It clearly described that "aggression and conflict using force should be avoided, and the relaxation of tension and peace should be guaranteed." In particular, Article 3 of the above Agreement expressed that "the South and the North shall neither libel nor defame against each other." Article 9 sets forth that "the South and the North shall not use force against each other and not aggress each other by using force," while Article 10 declares that "the South and the North have to solve peacefully difference in opinion and contentious problems through dialogue and negotiation." All these provisions have provided a foundation from which war can be prevented on the Korean Peninsula. Moreover an 'Attached Agreement for Execution and Observance of the South-North Reconciliation' has been arranged. For the implementation of these Agreements, North-South dialogue should be resumed as soon as possible.

## Article 21

154. As the initial report mentioned, Article 21 of the Constitution protects the freedom of assembly by providing that "all citizens shall enjoy freedom of assembly. Permission of assembly shall not be recognized." However, the Act Concerning Assembly and Demonstration has been legislated to guarantee peaceful assembly and demonstration and protect citizens from illegal violent assemblies.



155. The Act prohibits assemblies or demonstrations which represent a clear threat to public peace and order through mass violence, intimidation, destruction and arson, or which intend to achieve the objectives of a political party dissolved by a decision of the Constitutional Court (Article 5). Open-air assemblies or demonstrations before sunrise or after sunset (Article 10) and open-air assemblies or demonstrations held in public places such as the National Assembly building and the Court, or on main roads (forbidden or restricted under the presidential decree due to traffic congestion), are prohibited for the maintenance of order.

156. A person who intends to hold an assembly does not need permission from the authorities, but in case of open-air assemblies or demonstrations, reporting to the chief of the relevant police station is required for administrative purposes. A person intending to hold an open-air assembly or demonstration must submit to the relevant police station, at least 48 hours prior to the assembly or demonstration, the necessary papers referring to the purpose, date and time, place, sponsor, contact person, name-address-vocation of the person responsible for the organization, the number of people expected to participate, and the method of demonstration (Article 6).

The police station chief receives the application and uses it for administrative reference. For example, if the assembly or demonstration in the application is prohibited under the Act Concerning Assembly and Demonstration, the police chief may notify the sponsors of this fact within 48 hours from the time of application. This notification does not imply permission of assemblies or demonstrations by the chief of police. The police chief is simply drawing the attention of the organizers to the fact that certain assemblies are forbidden under relevant laws.

157. In the Republic of Korea, the radical and violent demonstration atmosphere formed under the military regimes of the past has yet to completely vanish.



Some demonstrations lead to the occupation of traffic lanes in city centers, the use of fire bombs and stones, and attacks on public offices. Due to the above features of demonstrations, the police reviews the purpose of the assembly or demonstration, the sponsor's previous record of violent demonstration, the inclination of the participants, the ability of the sponsors to control the participants, and the possession of fire bombs. If it is deemed most likely that the demonstration will turn violent, the organizers are notified that it is not allowed under the Act Concerning Assembly and Demonstration. This is not due to the anti-government disposition of the assembly or demonstration, but only because of the anticipated violence.

### Restrictions upon freedom of association

159. Freedom of association may be restricted by law if it is necessary for national security, the maintenance of public order or for public welfare.

## Article 22

### Guarantee of freedom of association

158. Article 21 of the Constitution guarantees the general freedom of association and prohibits prior control over association by providing that "all citizens shall enjoy freedom of association ... giving permission to association shall not be admitted."

160. Article 66 of the National Civil Service Act and Article 53 of the Private School Act. In addition, Article 33, paragraph 1 guarantees freedom of association of workers by stating that "to improve working conditions, workers shall have the rights of organization, collective bargaining and collective action." To guarantee workers' rights to organize, Article 8 of the Labour Union Act provides that "employees (who live on wages, salaries and/or other income) may freely organize or join labour unions." This allows two or more workers to organize any kind of a labour union. Article 39 of the above-mentioned Act prohibits management from dismissing an employee



for his or her involvement in the organization and rightful participation in the activities of a trade union. This Article also forbids management from interfering in the operation of a labour union or rejecting a request for collective negotiation from a labour union. The worker or union can bring a case of unfair labour practice on the part of the employer to a labour committee composed of representatives from labour, management and public interest groups. The committee may grant relief and recommend criminal punishment of the employer.

### **Restrictions upon freedom of association**

159. Freedom of association may be restricted by law if absolutely necessary for national security, the maintenance of law and order or for public welfare. Article 37, paragraph 2 of the Constitution describes the general principle of restricting basic rights. Article 33, paragraph 2 of the Constitution provides that only those public officials who are designated by law shall have the rights to organization, collective bargaining and collective action. In accordance with this clause, the Labour Union Act and the National Civil Service Act restrict the above-mentioned rights in regard to public servants. The scope of and reasons for these restrictions are stated in the initial report.
160. Article 66 of the National Civil Service Act and Article 55 of the Private School Act prohibit the organization of teachers' unions. Teachers share common attributes of other workers from the viewpoint that they engage in educational affairs and receive salaries in return. Due to the public and moral dimension that education contains, however, teachers bear the same social responsibilities as other public servants, and this special character of teachers' function is deeply rooted in the minds of the people of the Republic of Korea. Moreover, the prohibition of teachers' union guarantees citizens' rights to education and maintains the nature of the education system for the benefit of the public, given the fact that the work relationship



of teachers cannot be considered the same as that of common workers.

As a practical measure to guarantee teachers' rights to organize, Article 80 of the Education Act provides that "teachers may organize Education Associations at central as well as local levels for the purpose of ... promoting their own economic and social status." The Special Act for Improvement of Status of Teachers, effective as of 31 May 1991, provides in Articles 11 and 12 that the Education Association can negotiate with or consult with the Minister of Education or the Superintendent of Educational Affairs on the improvement of treatment and work conditions for teachers.

161. Regarding the Private School Act, which prohibits the organization of private school teachers' unions, the Constitutional Court decided that since private school teachers can promote their economic and social status through the Education Association, restrictions or prohibition of the exercise of workers' three basic rights (rights to association, collective bargaining and collective action) cannot be said to have violated the essential aspects of their basic rights. These restrictions are not unconstitutional because the legislator has determined that they are necessary and adequate to maintain the nature of the educational system in the interest of the public, and considering in full the special character of teachers' status and historical realities of this nation (Decision 89 HEONMA 106 of 22 July 1991).

In a decision on Article 66, paragraph 1 of the National Civil Service Act restricting the three basic labour rights of public servants, the Constitutional Court stated that "this provision prohibiting labour movements by public officials except for those by actually engaged in labour does not violate the Constitutional provision of equality" (Decision 92 HEONBA 1 of 28 April 1992).

162. Article 3, item 5 of the Labour Union Act stipulates that a planned labour



union will not be approved in case it has the same organizational objective as an existing labour union, or if it aims to interfere with the normal operation of such a union. This provision has taken into account the fact that most of the labour unions are established on an enterprise basis in the Republic of Korea. It is feared that the existence of two or more unions eyeing for the same group of workers who are already members of a union could result in troubles, such as the disintegration of a labour union, weakened negotiation capabilities, complication of the negotiating process, and disputes among workers and between workers and employers. The terms of the Labour Union Act are designed to avoid these developments.

## **Accession to ILO**

163. On 9 December 1991, the Republic of Korea became a member of the International Labour Organization, the last UN specialized agency for the Republic of Korea to join. Since 16 June 1996, the Republic of Korea has been participating more vigorously in its affairs as a member of the Council. After accession to the ILO, the Government has been exerting greater efforts to promote workers' rights and enhance international cooperation in the field of labour.

## **Revision Process of the labour-related laws**

164. In 1987, the present Labour Union Act underwent a major revision in keeping with the general trend of democratization of society. Such restrictive provisions as limitations on the establishment of labour unions were eliminated to guarantee free and independent labour movement. Since then, suggestions have continuously been made from various social sectors



on matters that either do not meet the current industrial realities or could possibly restrict workers' rights. In particular, confrontation between labour and management over the issues of multiple labour unions, ban on third party intervention, replacement of striking workers, flexible work hour system, and dismissal for managerial reasons, has made a reasonable compromise an elusive task. In March 1996, the Government launched the Presidential Committee on Labour Reforms composed of individuals from various fields including employees, employers, scholars, etc. This Committee aims at reforming industrial relations through revisions in labour-related laws and restructuring of the labour administration organizations.

## Registration of political parties

165. The initial report already stated that a political party, on view of its importance, is given special protection under the Constitution. In order for an organization to be registered as a political party eligible for such protection, it should secure sub-organs necessary to form citizens' political opinions. According to the Political Party Act, for an organization to be registered as a political party, it must be composed of a central party and district chapters equal to a tenth or more of the total regional electoral districts for the National Assembly members (Article 25) with adequate geographical distribution (Article 26). When the requirements are no longer satisfied, the Central Election Management Committee revokes, *ex officio*, its registration (Article 38, paragraph 1 of the Political Party Act), and the organization is denied the status of a political party. Also when the party fails to win a seat or get more than two hundredths of the total effective votes in the general elections for National Assembly Members, the Central Election Management Committee revokes its registration.

As of June 1996, seven political parties were registered. They



include the New Korea Party (151 National Assembly members), the National Congress for New Politics (79 members), the United Liberal Democrats (49 members), the Democratic Party (12 members), the United National Non-Political-Factionalists, the Christian People's Party, and the Unified Korean Party have been registered.

One change has been made in relation to accession to a political party. Members of the press are now permitted to join parties, whereas, in the past, members of the press were denied admission in order to maintain political neutrality of the press. The revised Political Party Act of 27 December 1993 allows, without any restrictions, these individuals to join political parties (Article 6 of the Political Party Act).

## Article 23

### Paragraph 1

#### Protection of families and homes

166. Article 36, paragraph 1 of the Constitution provides that "marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of sexes, and the State shall do everything in its power to achieve that goal". Men and women under their free will are supposed to maintain a democratic family system on equal footing.
167. Article 779 of the Civil Code prescribes members of the family; notably the spouse of the head of a family, blood relatives (lineal ascendants and lineal descendants; brothers and sisters; lineal descendants of brothers-sisters; brothers-sisters of lineal ascendants; lineal descendants of brothers-sisters of lineal ascendants) and their spouses. But in the social sense, the concept



of a family is understood as a sphere centered around a married couple where close blood relatives live together and lead a joint life based on love and caring. The family is considered the most basic unit of society.

168. In the past, the family system of the Republic of Korea had the rather conservative character of a traditional Confucian patriarchy. With the progress of industrialization, urbanization and increased social participation of women, however, the nuclear family composed of the couple and their children replaced the extended family as the common base unit, and the family system has assumed a more democratic character respecting the dignity of each individual and equality of the sexes. It has already been stated in the initial report that the Civil Code was revised on 13 January 1990 to support the trend mentioned above.

## **Paragraphs 2 and 3**

### **System of Marriage**

169. Under Articles 800, 801, 807 and 808 of the Civil Code, any adult may freely enter into a matrimonial engagement and marry. A minor also can enter into a matrimonial engagement and into matrimony if he has attained 18 years of age or she has attained 16 years of age with the consent of his or her parents or guardian.

As for marriage, monogamy is guaranteed where two individuals join under their own free will; bigamy is prohibited by Article 810 of the Civil Code. An application can be made to the court for an annulment of marriage when marriage was induced by fraud or duress and in cases of bigamy.

170. Marriage among close relatives is forbidden from the dysgenic point of



view and traditional ideas influenced by Confucianism. Article 815 of the Civil Code declares null and void a marriage between lineal blood relatives, collateral blood relatives within the range of third cousin. As for marriage between individuals who share the same surname and family origin, an application to the court for an annulment of that marriage may be made under Article 816 of the Civil Code. There are dissenting opinions on the prohibition of marriage between individuals who share the same surname and place of origin; the possible abolition of that provision is being studied.

171. The place where a husband and wife live together shall be determined by an agreement between them (Article 826, paragraph 2 of the Civil Code). The couple shall exercise the right of proxy for each other on daily household matters (Article 827, paragraph 1 of the Civil Code), and the living expenses of husband and wife shall be borne jointly by them, unless a special stipulation has been made between them (Article 833 of the Civil Code).

Husband and wife may seek divorce by agreement or unilateral application to the court. In 1994, the number of marriages and divorces reported were 304,146 and 50,960 respectively.

## **Paragraph 4**

### **Right of the spouse**

172. It was already mentioned in the initial report that the present Civil Code, effective from 1 January 1991, provides for equal rights and duties between husband and wife through joint exercise of parental authority with respect to a minor child; elimination of discrimination at inheritance; and the right to demand division of properties.



Protection work 175. Furthermore, the inheritance law was revised in December 1994. Through this revision, the criteria for gift tax and inheritance tax deductions for spouses were upgraded by a very wide margin. This signifies the recognition of reasonable property rights upon jobless spouses.

## Article 24

### Paragraph 1

173. It has already been confirmed in the initial report that prohibition of discrimination against children and the protection of children are duly guaranteed under Article 11, paragraph 1, Article 31, paragraph 2, and Article 32, paragraph 5 of the Constitution, in addition to relevant provisions of the Child Welfare Act, the Labor Standards Act and the Education Act. Some additional comments will be made below.

### Accession to the Convention on the Rights of Children

174. The Republic of Korea, joining in the United Nation's effort to protect children, deposited the instrument of ratification for the Convention on the Rights of Children with the Secretary-General of the United Nations on 20 November 1991. The first report transmitted on 30 November 1994 was examined by the Committee on the Rights of the Child in January 1996.



## **Protection of working children and decrease in the number of working children**

175. The initial report has observed that Article 32, paragraph 5 of the Constitution provides that "special protection shall be accorded to working children," and that in accordance with this provision, the Labour Standards Act sets forth restrictions on the working hours of children (Articles 55, 56) and prohibits the engagement of children in any harmful or dangerous work (Articles 51, 58). Moreover, in order to prevent economic exploitation of children, Article 53 of the Labour Standards Act states that no parent or guardian shall be authorized to make an employment agreement on behalf of a minor: in case the employment agreement may be deemed disadvantageous to a minor, the parent, guardian or the Minister of Labor may terminate it. For observance of special provisions on child protection, 45 local labour agencies nationwide guide and supervise workplaces with no less than five workers.

In response to these special protection clauses and increased school attendance of children, the ratio of children under 18 in workplaces with no less than five full-time workers has dropped tremendously from 2.8% (90,625 out of 3,219,442 total workers) in 1980 to 0.4% (23,916 out of 6,167,596 workers in total) in 1995.

## **Responsibility of parents to protect children and respect for the child's own will**

176. Parents are responsible for raising children. Article 909, paragraph 1 of the Civil Code stipulates that "the child who is a minor, shall be subject to the parental authority of parents." Article 913 provides that "a person in parental authority shall have rights and duties to protect and educate his or her child."



In case a person of parental authority abuses that authority or is guilty of gross misconduct, or there exists any other cogent reason for not allowing him or her to exercise parental power, or if a person in parental authority endangers his or her child by mismanagement of the child's property, the court may adjudge his or her loss of parental authority and the right of the management of the property of the child. (Articles 924 and 925 of the Civil Code).

When the person with parental authority is representing a child on occasions in which an obligation is to be assumed requiring any act of the child, the consent of the child shall be obtained (Article 920 of the Civil Code). Also, a minor with the ability to express his or her own thoughts, may conduct business acts with the approval of his or her parental authority (Article 5 of the Civil Code).

When the parents cannot reach agreement on matters concerning custody in cases of legal separation, a child who is more than 15 years old is consulted as to which parent he or she wishes to stay with. In case of adoption of a child age 15 or over, the child shall not be adopted without his or her own consent.

### **The present situation of facility accommodation measures for children in need of protection**

177. Some facilities are required to provide social protection to children who are abandoned or whose protectors are not qualified to raise them. Article 12 of the Child Welfare Act stipulates necessary protective measures for this type of child. As of 31 December 1995, 18,074 children were accommodated in 269 protective facilities.



## **Protection of children under the Minor Protection Act**

178. The Minor Protection Act was legislated in 1961 to guide and care for minors. This Act aims to protect minors by stipulating necessary details and by proscribing minors' smoking, drinking and activities against social virtue.

In accordance with this Act, minors are prohibited from smoking and drinking and from gaining access to certain places including saloon bars and gambling houses. Minors are also not permitted to go into areas designated by the police as off-limits, to prevent misdemeanors by minors.

## **Protection of the minor from violence, maltreatment and sexual exploitation**

179. The Criminal Code strives to protect minors from sexual exploitation and violence. Article 287 provides that "a person who kidnaps a minor by force or inveiglement shall be punished by penal servitude for not more than ten years." Article 242 states that "a person who, for the purpose of earning profit, induces a minor to engage in sexual intercourse, shall be punished by penal servitude for not more than three years or by a fine not exceeding 15 million Won (approx. US\$ 19,000)."
180. Article 34 of the Child Welfare Act stipulates punishment for following acts: forcing a child to perform obscene acts or mediating such activity, having a child under 14 engage in entertaining activities in certain places, including saloon bars, making a child beg, and maltreating a child who is under his or her protection or supervision.



## Protection of children born out of wedlock

181. The Civil Code provides equal protection for legitimate and illegitimate children. Children born out of wedlock are protected at first by the establishment of legal family relations. This is established through the recognition of the natural father or mother (Articles 855 and 859 of the Civil Code). In case it is not possible to obtain recognition, a child may bring a suit against his or her natural father or mother to demand recognition (Article 863 of the Civil Code). Recognition shall be effective retroactively as from the time of birth (Article 860 of the Civil Code). As a consequence of establishing a family relationship, illegitimate children are treated equally with legitimate children in support and inheritance.

A child born out of wedlock shall be deemed to be a child born during marriage from the time his or her parents marry (Article 855 of the Civil Code).

### Paragraph 2

#### Name of the child

182. Concerning the registration and surname of a child, the Civil Code provides that a child shall take his or her father's surname, the family origin, and enroll in the father's family registry. In the case of a child whose father is not recognized, his or her mother's surname and family origin are taken, and the child is enrolled in the mother's family registry. However, a child whose father and mother are unknown, with approval of the court, may create a new surname and origin of surname, and establish a new family.
183. Article 49 of the Family Registration Act requires reporting of birth within one month. A birth report is established by submitting application papers



to the administrative office at the place of birth. In case of in wedlock birth, the child's father or mother has the obligation to file a birth report. In case of birth out of wedlock, the child's mother is responsible for the birth report (Article 51 of the Family Registration Act). As for foundlings, the head of the relevant local administrative office shall, upon authorization of the court, establish a surname and place of origin, and decide on a name and address under which the child is to be registered. (Article 57 of the Family Registration Act).

### **Paragraph 3**

#### **Nationality of the child**

184. Children born out of wedlock, foundlings discovered in the Republic of Korea and children of the stateless acquire the nationality of the Republic of Korea in accordance with Article 2 of the Nationality Act. Therefore the following persons shall be nationals of the Republic of Korea: a person whose father is a national of the Republic of Korea at the time of his or her birth; a person whose father has died before his or her birth and who was a national of the Republic of Korea at the time of death; a person whose mother is a national of the Republic of Korea, if his or her father is unknown or has no nationality; a person who is born in the Republic of Korea and whose parents are unknown or have no nationality (Article 2, paragraph 1). In addition, all foundlings discovered in the Republic of Korea shall be presumed to have been born in the Republic of Korea (Article 2, paragraph 2).



## Article 25

185. The principle that sovereignty resides in the people is declared in Article 1, paragraph 2 of the Constitution, which stipulates that “the sovereignty of the Republic of Korea shall reside in the people, and all state authority shall emanate from the people.” Under this principle, citizens are entitled to directly participate in the formation of the national will through: provisions on national referenda on important policies relating to the national destiny (Article 72 of the Constitution); proposed amendments to the Constitution (Article 130, paragraph 2 of the Constitution); indirect participation in public duties through representatives elected by exercise of the right to vote (Article 24 of the Constitution); and the exercise of their rights to hold public office (Article 25 of the Constitution).

### Overall local elections

186. With regard to performance of public duties through exercise of the right to vote, one of the major changes in the Republic of Korea is the election of the head and council members of local governments.

The establishment of local autonomy to assure participation of local residents in local administration was carried out in the Republic of Korea from 1949 to 1961. This practice was suspended, however, during the military regime and not renewed until arrangements were made for the direct election of local council members in 1991. This was extended to heads of local governments resulting in the complete restoration of the citizen's right to participate. Elections were held on 27 June 1995 under the Public Office Election and Unfair Election Prevention Act for the following government offices: head of the local government, i.e. a Special City, 14 metropolitan cities and provinces; 230 primary areas of Shi(city),



Kun(county) and Ku(borough); and for a total of 5,715 local council members, i. e. 931 greater area level and 4,541 primary area-level elections.

## **Enactment of the Public Office Election and Unfair Election Prevention Act and its main contents**

187. The Public Office Election and Unfair Election Prevention Act was legislated and promulgated on 16 March 1994 to provide a legal basis for the prevention of unfair elections. It also aims to promote better understanding of the electoral system and to balance the administration of each election through the systematization of diverse acts such as the Presidential Election Act, the National Assembly Member Election Act, and the Local Council Members Election Act into a single election legislation.

The Public Office Election and Unfair Election Prevention Act states in Article 1 that “the purpose of this Act is to hold fair elections in accordance with the free will of the citizens and democratic procedures, and to contribute to the development of democratic politics through the prevention of election-related unfairness.” It stipulates, in detail, various matters concerning the method and procedures to be followed during election.

### **Article 26**

188. The right to vote is granted to citizens over the age of 20. The minimum age for electoral eligibility for citizens is 40 for President and 25 for members of the National Assembly, local councils and head of local government.

However, the right to vote and electoral eligibility are denied to individuals ruled to be incompetent by the court or who have not finished serving a sentence no less severe than imprisonment.



## Guarantee of universal, equal, direct and secret ballot

189. Article 41, paragraph 1 and Article 67, paragraph 1 of the Constitution declare the principle of universal, equal, direct and secret ballot. The concrete terms for application of the principle can be found in the Public Office Election and Unfair Election Prevention Act which stipulates the exercise of a single vote per person (Article 146) and the guarantee of secrecy (Article 167).
190. Regarding the equal ballot, the Constitutional Court has expressed the opinion that “according to the constituency chart of the Public Office Election and Unfair Election Prevention Act, ‘Haeundae-ku, and Kijang-kun Constituency of Pusan city’ and ‘Kangnam-ku B-Constituency of Seoul’ exceed the nationwide constituency average of 175,460 inhabitants by more than the allowed 60% variation, and therefore, demarcation of the two constituencies as a derogation of the legislative discretion of the National Assembly and violation of voter equality principle, is unconstitutional.”

## Article 26

191. The preamble of the Constitution states that “We the people of Korea ... [have] determined to ... afford equal opportunities to every person ... in all fields, including political, economic, social and cultural life.” Meanwhile, Article 11, paragraph 1 of the Constitution provides that “all the citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.” Equality before the law and equal protection of law is made clear in those provisions.



Concrete contents have already been illustrated in detail in the relevant sections of the initial and this report, *inter alia*, the section on Article 2 of the Covenant.

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## Article 27

192. In the Republic of Korea, as already mentioned in the initial report, every individual enjoys the right to appreciate one's own culture, to profess and practice one's own religion and to use one's own language. Although the minorities in the strict sense of Article 27 of the Covenant do not exist in the Republic of Korea, nationalized overseas Chinese or other non-Korean nationals in the Republic of Korea enjoy their respective culture, religion and language, in accordance with the Constitution and the Covenant.
193. In November 1991, the Republic of Korea ratified the Convention on the Rights of the Child. With the acceptance of obligations in regard to provisions on protecting the rights of Minority or Native children (Article 30 of the above Convention), the Republic has reaffirmed its basic policy of protecting minorities' rights.

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인권 자료식		
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## REPUBLIC OF KOREA (SOUTH KOREA)

### Hidden victims: the long-term political prisoners



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# REPUBLIC OF KOREA (SOUTH KOREA)

## Hidden victims: the long-term political prisoners

There are over 50 long-term political prisoners in South Korea, half of whom are over the age of 60. They have all spent over seven years in prison, and some have been in prison for several decades. Sentenced to long prison terms for national security offences under past governments, they are South Korea's forgotten prisoners.

This report focuses on the cases of long-term political prisoners who were convicted unfairly during the 1970s and 1980s. Amnesty International has documented 20 of these cases (all of whom are men) but believes there may be at least a dozen more. In all of the cases documented by Amnesty International, the evidence strongly supports the view that they are the victims of human rights violations.

These prisoners were arrested and tried under South Korea's National Security Law. Many were students and businessmen at the time of their arrest. Some had travelled abroad and had been in contact with North Koreans; some had lived in Japan or had relatives in Japan. They were accused of passing "state secrets" to North Korean agents in Japan or other countries and other espionage activities. In these cases there is evidence of illegal arrest, incommunicado detention for a long period of time, claims by the prisoners that they were forced to confess under torture and a lack of facilities in the preparation of a defence. Amnesty International believes that they were convicted largely on the basis of confessions which were extracted under torture.

These prisoners were arrested and convicted at a time when human rights violations were widespread. During most of these two decades the country was ruled by authoritarian military governments. General Park Chang-hee seized power in 1961 and held the office of President until his assassination in 1979. Another army general, Chun Doo-hwan, became President in 1980 and held office until 1987 when he was forced by popular protests to call a direct presidential election. He was succeeded by Roh Tae-woo who held office until 1993. In 1996 two of these former presidents, Chun Doo-hwan and Roh Tae-woo, were sentenced to long prison terms on charges which included corruption and human rights violations.

The long-term political prisoners were convicted in the context of a divided Korea. Since the Korean War (1950-53) the governments of North Korea (the Democratic People's Republic of Korea) and South Korea (the Republic of Korea) have prohibited almost all contact between citizens of the two countries. In South Korea, unauthorized contacts have often resulted in imprisonment under the National Security Law. The National Security Law provides long prison terms for unauthorized contacts with North Koreans, for "praising" and "benefitting" North Korea and forming or joining organizations alleged to be pro-North Korean. It also provides long sentences or the death penalty for "espionage" and passing "state secrets" to North Korea. However, the term "espionage" is vaguely-defined in the National Security Law and has sometimes been used to imprison people who were



exercising their rights to freedom of expression and association. The definition of "state secrets" has included information which is publicly available in South Korea.

The long-term political prisoners are currently held in a number of different prisons throughout the country. Most are held in single cells and some have little contact with other prisoners. Conditions of imprisonment vary from prison to prison, and from prisoner to prisoner. Some prisoners appear to be in good health and are allowed to associate with other prisoners. Others are held in solitary confinement and are not allowed to mix with other prisoners. Some of the prisoners are reported to be suffering from psychological problems as a result of long-term isolation. Some suffer from digestive ailments, rheumatism, high blood pressure and other illnesses. Medical facilities in South Korean prisons are generally poor and most prisons have only one part-time doctor. Prisons are virtually unheated in winter.

Some of these prisoners are under constant pressure from the prison authorities to "convert", meaning to sign a statement renouncing their real or alleged communist views. Those who refuse to do this are not considered for release on parole and generally have fewer rights and privileges than other prisoners. For example, visits and reading material may be restricted.

It is often difficult for long-term political prisoners to communicate with the outside world. While some are permitted to send letters to friends and supporters at home and abroad, others are not permitted to do so. While some are allowed visits from friends and supporters, others are only allowed to see close relatives. These rules sometimes appear to be applied in an arbitrary manner. During a visit to South Korea in September 1996 an Amnesty International delegation was denied access to two long-term political prisoners in Taeyon Prison on the grounds that Amnesty International had failed to fulfill the "procedural requirements". However, it was not clear what these requirements were, since the delegates had obtained prior written authorization for the visit from the Ministry of Justice.

It is the government's responsibility to review the cases of long-term political prisoners who were convicted unfairly, but it has not taken on this responsibility. In South Korea there is no independent body or individual responsible for the protection of human rights and the investigation of reported human rights violations. There has been no systematic and independent investigation into past human rights violations.

For several years human rights lawyers and activists in South Korea have sought retrials for some long-term political prisoners, as a means of obtaining redress. Under South Korea's Code of Criminal Procedure a retrial may be granted if it is proved that evidence was forged, testimony was false and when new "clear evidence" is discovered. But the requirements for a retrial have proved to be extremely difficult to meet and as far as Amnesty International is aware, no long-term political prisoner has secured one.

The statute of limitations on public prosecutions means that it is impossible to prosecute those responsible for human rights violations inflicted on long-term political



prisoners after their arrest. This is because the violations occurred too long ago for those responsible to be brought to justice under South Korean law. In January 1995 eight long-term political prisoners filed a complaint of torture against investigation officials but their complaint was dismissed on the grounds that the statute of limitations had expired.

In the absence of any legal redress for the long-term political prisoners, Amnesty International has urged the current government to find an effective remedy for these victims of human rights violations committed under previous governments. The current President, Kim Young-sam, took office in 1993 promising a new beginning with greater freedom and democracy. In 1995 his government took an important step in addressing past human rights violations by introducing legislation which extended the statute of limitations for certain crimes, including mutiny and treason. This led to the successful prosecution of two former presidents, Roh Tae-woo and Chun Doo-hwan, and 13 other former army officials on charges which included the killings of demonstrators in Kwangju in May 1980.

However, the successful prosecution of two former Presidents has not benefitted the long-term political prisoners - there has been no investigation into many other human rights violations committed under previous governments. The long-term political prisoners have little hope of obtaining redress, apart from the possibility of early release on parole. Amnesty International believes that it is unacceptable to neglect the individual victims of past human rights violations, especially those who are still in prison.

A presidential election will be held in December 1997. As the campaign gets underway, Amnesty International is calling on the current government, the main political parties and individual legislators to ensure that the cases of long-term political prisoners are not forgotten in the election campaign.

Amnesty International makes the following recommendations:

- **Review or release:** Amnesty International calls for a review of all the cases of long-term political prisoners who were convicted during the 1970s and 1980s where there are reports that the prisoners were tortured and convicted after unfair trials. In some well-documented cases Amnesty International is convinced the charges are unfounded and calls for the prisoner's immediate and unconditional release.
- **Investigation of past human rights violations:** Amnesty International calls on the government, the main political parties and individual legislators to find an effective means of investigating past human rights violations. This is of particular urgency in the cases of long-term political prisoners who are still in prison.
- **Prison conditions:** Amnesty International calls on the government to ensure that the conditions of imprisonment for long-term political prisoners are in conformity with international human rights standards.



### ***Yu Chong-sik: 22 years in prison***

Yu Chong-sik, aged 57, was born in Japan but spent most of his childhood in South Korea. During the 1960s he studied in Japan and then returned to South Korea where he got married and became an art dealer.

Yu Chong-sik was arrested in March 1975 by the Korean Central Intelligence Agency (which later changed its name to the Agency for National Security Planning) and was held for one month without access to a lawyer. During this time he claims to have been tortured and forced to make a false confession.



Yu Chong-sik was charged under the National Security Law with spying for North Korea - he was alleged to have received orders to infiltrate student organizations, establish underground organizations and collect "state secrets". Yu Chong-sik denied these charges but was found guilty and sentenced to death. His sentence was later commuted to life imprisonment and in 1995 it was reduced to 20 years' imprisonment in a presidential amnesty.

Yu Chong-sik should have been eligible for release in 1995 but was given an extra three-year prison term under the National Security Law for allegedly "praising" North Korea in prison. Amnesty International has adopted Yu Chong-sik as a prisoner of conscience and is calling for his immediate and unconditional release.

### ***Kang Hui-chol: 11 years in prison***

*"How happy I would be if I could see you some day. I have this hope in my mind"*  
(letter from Kang Hui-chol to Amnesty International members in Norway).

Kang Hui-chol, aged 39, was arrested by the police in April 1986 and held incommunicado for 85 days during which time he was reportedly tortured. He was charged under the National Security Law for giving "state secrets" about the location of roads and government offices to a North Korean agent in Japan and receiving espionage training. But he claims that his confession was extracted under torture. He was sentenced to life imprisonment.

Human rights activists in South Korea have found several inconsistencies in the investigation records of Kang Hui-chol's case. A police investigator admitted to a human rights group in South Korea that there was no evidence that Kang Hui-chol had taken photographs of government offices and roads and passed them to North Korea. Kang Hui-chol was convicted largely on the basis of his own confession.



Kang Hui-chol was born in South Korea but in 1975 he went to Japan illegally to join his parents who had moved there several years earlier. He was deported to South Korea in 1981 where he married and took a job as a hotel clerk.

He is reported to be suffering from psychological problems, possibly as a result of torture. He has no close family living in South Korea. In September 1996 an Amnesty International delegation sought to visit him in Taejon Prison but was denied access. Amnesty International has adopted Kang Hui-chol as a prisoner of conscience and is calling for his immediate and unconditional release.

### ***Kim Song-man: 12 years in prison***

*"I have lived in the prison for more than ten years. I think I am going through a period of darkness and patience in my life. But I have not lost a dream to contribute to social welfare in my future. The dream brightens my burden of hardship in prison." (Letter to Amnesty International members in Belgium).*



Kim Song-man, aged 39, was a student at the time of his arrest in June 1985. He had studied political science at Western Illinois University in the USA and had visited several Eastern European countries out of a desire to learn more about North Korea and the possibilities for Korean reunification.

Kim Song-man was accused of taking instructions from North Korea to engage in anti-government activities and of having distributed pro-North Korean material. He was also alleged to have passed "state secrets" to North Korea, on the basis that he had given some leaflets to North Koreans he met in Europe. Although there was no evidence that he had carried out espionage activities, he was found guilty and sentenced to death. In his appeal to the Supreme Court Kim Song-man wrote:

*"I am a person who wishes the independence of our nation and democracy. I think that this ideal can be realized in a socialist country. I was interrogated and tortured mercilessly at the Agency for National Security Planning. During the interrogation and torture I was even forced to write a suicide letter addressed to my parents in order to disguise my possible death as a suicide"*

Kim Song-man spent almost three years under sentence of death before his sentence was commuted to life imprisonment. Amnesty International has adopted him as a prisoner of conscience and is calling for his immediate and unconditional release.

In April 1993 the United Nations Working Group on Arbitrary Detention said that Kim Song-man's imprisonment contravened the Universal Declaration of Human Rights and



the International Covenant on Civil and Political Rights, which has been ratified by South Korea. The Working Group urged the South Korean Government to remedy the situation. However, Kim Song-man remains in prison today, without an effective remedy.

### **Hwang Tae-kwon: 12 years in prison**

*After 60 days of torture and beatings in the basement of the Agency for National Security Planning and after three years of imprisonment for a crime 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". I am also hoping to restore my own human dignity which has been ruthlessly trampled upon during the interrogation and imprisonment. (Letter from prison, 1988).*

Hwang Tae-kwon, aged 42, was arrested in the same case as Kim Song-man. He had also studied political science at Western Illinois University in the USA and had been active in the student movement. Like Kim Song-man, he admitted having had a genuine desire to learn about North Korea, in order to help bring about Korean reunification.



After his arrest in 1985, Hwang Tae-kwon was held incommunicado for 60 days by the Agency for National Security Planning, during which time he said that he was repeatedly beaten, threatened, deprived of sleep and forced to write a false confession. He said *"Ironically the only document submitted to the court as conclusive evidence that I was a spy was drafted by myself and later revised by the interrogator in charge, then copied by myself word-for-word"*.

Hwang Tae-kwon was found guilty under the National Security Law on charges of passing "state secrets" to North Korean agents and engaging in pro-North Korean activities. He was sentenced to life imprisonment which was reduced to 20 years' imprisonment in a presidential amnesty. Amnesty International has adopted Hwang Tae-kwon as a prisoner of conscience and is calling for his immediate and unconditional release.

In April 1993 the United Nations Working Group on Arbitrary Detention said that Hwang Tae-kwon's imprisonment contravened the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

★ Amnesty International is also calling for the release of two other prisoners who were arrested in this case. They are Kang Yong-ju and Yang Dong-hwa who were sentenced to 20 years' imprisonment and life imprisonment respectively.



### ***Cho Sang-nok: 19 years in prison***

Cho Sang-nok, aged 51, was arrested in January 1978 and held for 17 days without access to lawyers or family. During this time, he said he was subjected to electric shock and water torture and beaten. He was forced to write a confession.

Cho Sang-nok was sentenced to life imprisonment under the National Security Law on charges of spying for North Korea. He was accused of passing "state secrets" to North Korean agents in Japan. But the main evidence used to convict him appears to have been his own confession.



During the 1970s Cho Sang-nok studied in Japan and obtained a post-graduate degree in politics. During his stay in Japan he is reported to have been politically active and to have made comments critical of the South Korean Government. He was arrested soon after his return to Seoul.

Amnesty International does not have enough information about Cho Sang-nok to adopt him as a prisoner of conscience. However, on the basis of available information it believes he is probably a prisoner of conscience and that his case should be reviewed as a matter of urgency. Amnesty International is also concerned at reports that he is suffering from psychological problems, believed to be related to the effects of torture after his arrest and his long imprisonment in relative isolation.

### ***Lee Jang-hyong: 13 years in prison***

*"The detention of Lee Jang-hyong is declared to be arbitrary being in contravention of Articles 5, 9 and 10 of the Universal Declaration of Human Rights, and Articles 7, 9 and 14 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a party . . ."* (Decision of United Nations Working Group on Arbitrary Detention, May 1995).

Lee Jang-hyong, aged 65, was born on Cheju Island off the southern coast of Korea, but spent most of his childhood in Japan. During the Korean War (1950-53) he served as a second lieutenant in the Marine Corps and later worked as a restaurant manager in Seoul. He made frequent trips to Japan to visit his relatives.

In June 1984 Lee Jang-hyong was arrested by the Anti-Communist Division of the National Police headquarters in Seoul where he was held incommunicado for 67 days. During this time he says he was tortured and forced to confess that he had carried out espionage activities for North Korea. He was charged with passing "state secrets" to his



일본유학과 관  
하다. 이 경우에  
를 뿐 아니라  
학 당시 접촉  
경 일본유학시  
연행되어 무기  
수감생활을 계  
되었다가 그후  
명치대학 대  
조작되어 무기  
에 대한 참고인  
로 간첩이 되  
에게 포섭되어

8. 5), 홍성우변  
사협회, 『인권보고

(1) 조상록사건

조상록씨는 1973년 국회의원선거에 순천에서 출마한 경력이 있는 사  
람으로서 그후 일본명치대학 대학원에 유학을 하던 도중인 1978년 1월  
15일경 잠시 귀국한 사이에 중앙정보부에 연행되어 간첩으로 발표되었  
다.

그 범죄사실이란 일본에서 재일교포인 형집에 체류하면서 조총련간부,  
공작지도원 등을 만나 간첩으로 포섭되어 금품을 제공받고 국내에 잠입  
하여 국내의 여러 사람들을 만나 북한을 고무·찬양하였다는 것이었다.

그러나 조상록씨는 「상고이유서」에서 자신은 일본에서 몇몇 아는 교  
포들과 만나서 서로 의견을 나누고 학비에 보태쓰라고 하여 다소의 돈을  
받았을 뿐이며 국내에 와서는 이종사촌과 청와대에 대해서 자연스럽게  
얘기한 것뿐이라고 주장했다. 또한 그는 자신이 주일대사관 주최 신년회  
등에서 일본의 교과서 왜곡문제와 함께 일본군국주의에 대한 경계, 통일  
에 있어서의 외세배격 발언 등이 자신이 간첩으로 몰리게 된 이유라고  
설명하고 있다.<sup>57)</sup>

(2) 양승선사건

양승선씨는 1986년 2월 15일경 서울시경 옥인동 대공분실에 강제연행

56) 앞 「간첩사건조작증언자료집」, 147~148쪽

57) 「평화신문」 1989년 1월 1일자 기사

In June 1984 Lee Jang-hyong was arrested by the Anti-Communist Division of the  
National Police headquarters in Seoul where he was held incommunicado for 67 days.  
During this time he says he was tortured and forced to confess that he had carried out  
espionage activities for North Korea. He was charged with passing "state secrets" to his



uncle in Japan, said to be a North Korean agent. He was also accused of visiting North Korea for espionage training.

However, Amnesty International believes that the main evidence used to convict Lee Jang-hyong was his own confession, extracted under torture. Human rights groups working on this case have found many inconsistencies in the documentation of this case, including evidence that Lee Jang-hyong did not go to North Korea in December 1982, as the authorities claimed.

Lee Jang-hyong's family did not appoint their own lawyer, claiming that they were intimidated by the authorities. Instead, he was represented by a state-appointed lawyer. He was found guilty and sentenced to life imprisonment. Amnesty International has adopted Lee Jang-hyong as a prisoner of conscience and is calling for his immediate and unconditional release.



### **Park Dong-oon: 16 years in prison**

*"With the help of endless torture the security department transformed the whole family into spies over 60 days. Instead of catching spies they were creating spies. . . All of my family went through humiliation and pain and I cannot find words to describe them."*  
(Letter from Park Dong-oon's brother, 1991)



Park Dong-oon, aged 52, used to live on Chin Island where he worked for an agricultural cooperative. In March 1981 he and several members of his family were arrested and interrogated by the Agency for National Security Planning. They were held incommunicado for some 60 days and said they were subjected to beatings, threats, sleep deprivation and water torture. They were forced to make confessions.

Park Dong-oon was charged under the National Security Law with visiting North Korea to meet his father, who had been missing since the end of the Korean War (1950-53). The authorities said that Park Dong-oon's father was a North Korean spy and that he had given instructions to Park Dong-oon to carry out espionage in South Korea.

Park Dong-oon denied the charges but was sentenced to death, largely on the basis of confessions made by himself and his family. In 1982 Park Dong-oon's sentence was commuted to life imprisonment. Amnesty International has adopted him as a prisoner of conscience and is calling for his immediate and unconditional release.



**Cases of long-term political prisoners convicted during the 1970s and 1980s**

*(This table includes cases known to Amnesty International and is not intended to be a comprehensive list. It takes account of sentence reductions known at the time of writing).*

NAME	AGE	ARREST	SENTENCE	PRISON	TIME SPENT IN PRISON
Chong Yong	56	13/9/83	Life imprisonment	Taegu	13-and-a-half years
Cho Sang-nok	51	15/1/78	Life imprisonment	Andong	19 years
Han Ju-myong	64	18/2/83	20 years imprisonment	Kwangju	14 years
Hwang Tae-kwon	42	6/85	20 years' imprisonment	Taegu	12 years
Kang Hui-chol	39	21/7/86	Life imprisonment	Taejon	11 years
Kang Yong-ju	35	1/7/85	20 years' imprisonment	Andong	12 years
Kim Byong-ju	75	28/11/83	Due for release in 1999	Andong	14 years
Kim Chong-muk	58	4/7/82	Life imprisonment	Taegu	15 years
Kim Chang-ho	56	10/12/82	20 years' imprisonment	Taegu	14 years
Kim Song-man	39	6/6/85	Life imprisonment	Chonju	12 years
Kim Tac-ryong	49	15/6/79	Due for release in mid-1999	Taejon	18 years
Kim Yun-su	59	24/6/85	Due for release in late 1997	Taejon	12 years
Lee Jang-hyung	65	15/6/83	Life imprisonment	Andong	13 years
Nah Jong-in	60	4/85	Due for release in late 1997	Taejon	12 years
Park Chan-u	43	7/84	Due for release in mid-1997	Kwangju	13 years
Park Dong-oon	52	9/3/81	Life imprisonment	Taegu	16 years
Sohn Yu Byung	67	25/4/81	Due for release in mid 1998	Chonju	16 years
Sok Tal-yun	66	21/8/80	20 years' imprisonment	Chonju	16 and a half years
Yang Dong-hwa	38	2/6/85	Life imprisonment	Taegu	12 years
Yu Chong-sak	57	2/3/75	Due for release in March 1999	Andong	22 years



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# amnesty international

## REPUBLIC OF KOREA (SOUTH KOREA) Novelist Kim Ha-ki sentenced after visiting North Korea

March 1997

AI INDEX: ASA 25/18/97  
DISTR: SC/CO/GR

Amnesty International is calling for the immediate and unconditional release of Kim Ha-ki, 38-year-old novelist who has been sentenced to three-and-a-half years' imprisonment under the National Security Law for making an unauthorized visit to the Democratic People's Republic of Korea (DPRK, North Korea) and divulging "state secrets". Kim Ha-ki's imprisonment appears to be politically motivated and in violation of international standards protecting freedom of expression and the right not to be detained arbitrarily.

While Kim Ha-ki was visiting the People's Republic of China (PRC, China), in July 1996, he inadvertently crossed the border into North Korea. He was detained by the North Korean authorities for two weeks, then sent back to China where he was held for two days. Finally, he was returned to South Korea where he was arrested, charged and convicted under the National Security Law.

Kim Ha-ki is a popular novelist and a deacon in the Presbyterian Church. He was imprisoned as a prisoner of conscience from 1981 to 1988 for his student activities and during this time he became acquainted with several long-term political prisoners in Chunju Prison. After his release, Kim Ha-ki wrote several books about the lives of long-term political prisoners. These books, *Complete Encounter* and *Living Tombs*, have been reprinted several times in South Korea and have also been used for theatre production.

### *The story of Kim Ha-ki's visit to North Korea*

On 30 July 1996 Kim Ha-ki went on a holiday/study trip to Yanji City in China's Jilin Province.<sup>1</sup> He was travelling with his father, a cousin and some 60 other South Koreans.

<sup>1</sup>Yanji City, Jilin Province, is situated in the northeastern corner of China, close to where the borders of China, North Korea and Russia meet. It has a population of some 300,000, including many ethnic Koreans. Since South Korea established diplomatic relations with China in 1992, South Korea has invested heavily in Yanji which now has a number of South Korean businesses. The city's proximity to North Korea has also resulted in trade links with that country and a number of Yanji's hotels and restaurants are owned by North Korea.



On the evening of 30 July, Kim Ha-ki and other members of his party dined in a restaurant in Yanji City. According to other members of the party, Kim Ha-ki got involved in a discussion with one of the waitresses, who came from North Korea. He is reported to have talked of his wish to see North Korea. As the evening went on, he became very drunk.

At around 10.30pm he is reported to have left the restaurant and asked a taxi to take him to the shores of the Tumen River, which runs along the border between China and North Korea. The taxi driver, though reluctant to help, apparently showed him a shallow part of the Tumen river and he remembers wading across into North Korea.

Kim Ha-ki said that when he arrived on the opposite side of the river, five or six North Korean soldiers appeared. They tied him up and took him to a small lodging called the *Hweryong Yogwan*, where he slept.

The following day he regretted his actions. He was interrogated by several North Koreans and he told them that he had crossed the river inadvertently, under the influence of alcohol. The North Koreans asked him many questions about his family and his life in South Korea. They asked him to write an account of his prison life in South Korea. They asked him if he was familiar with the writings of Kim Il Sung (former North Korean leader). Two weeks later, on 14 August, he was sent back to China, where he was held for two days and fined for violating border regulations.

#### ***Arrest, interrogation and trial in South Korea***

On 17 August Kim Ha-ki was returned from China to South Korea where he was arrested and questioned by the Agency for National Security Planning (ANSP, South Korea's intelligence agency). ANSP officials asked him many questions about his visit to North Korea. They also asked him about his novels and about his former period of imprisonment in South Korea during the 1980s. ANSP officials are also said to have searched his home in Pusan and to have confiscated several books about North Korea.

During their investigation the ANSP released several statements to the media about the case. They are reported to have said that Kim Ha-ki cooperated with the North Korean authorities. For example, he had allegedly read and made favourable comments about books written by the former North Korean leader Kim Il Sung. He had also visited the birthplace of the current leader Kim Jong Il and received gifts from the North Koreans. The ANSP also claimed that Kim Ha-ki had joined the Workers Party of [North] Korea during his previous imprisonment when he had come into contact with long-term political prisoners convicted of spying for North Korea. This accusation was not included in the charges against Kim Ha-ki, but appears to have been used in his trial as background information to present him as a person likely to support North Korea.

In September Kim Ha-ki was formally charged under the National Security Law on several different counts: for making an unauthorized visit to North Korea; for meeting and communicating with North Korean officials; for "praising" and supporting North Korea; for receiving materials from North Korea and for divulging "state secrets" to North Korea.



Kim Ha-ki was tried before Seoul District Criminal Court. On 11 February 1997 he was found guilty of "revealing national secrets during [questioning] by North Korean authorities after illegally entering North Korea". He was sentenced to three-and-a-half years' imprisonment.

*Why AI has adopted Kim Ha-ki as a prisoner of conscience*

The National Security Law punishes those who make unauthorized visits to North Korea and those who "praise" or "benefit" North Korea, with the knowledge that it will damage state security. It also punishes those who divulge "state secrets" to North Korea.

However, there is no evidence to suggest that Kim Ha-ki's visit posed a threat to state security or that he intended to do so. The alleged "state secrets" were information which is public knowledge in South Korea. Amnesty International is concerned that Kim Ha-ki appears to have been punished because of his former political activities, including the content of his writings about long-term political prisoners.

Kim Ha-ki admitted that he made an unauthorized visit to North Korea but he did so inadvertently. He had also expressed a desire to see North Korea, as have many South Koreans who have been denied the possibility of contacting friends and family in North Korea.

Since Kim Ha-ki was detained by the North Korean authorities, he had no choice but to meet officials and to receive from them dry clothes and provisions for his daily needs during his period of detention in North Korea.

Kim Ha-ki was also accused of divulging "state secrets" to North Korean officials about everyday life in South Korea and about his experience as a political prisoner, from 1980 to 1988. The term "state secret" has been widely interpreted by the courts in South Korea and it is sometimes difficult for a person to know what it means. In some cases tried under the National Security Law, information already in the public domain was considered by the courts to be a "state secret". This interpretation has led to people being imprisoned for passing to others information which was widely available in South Korea, in violation of their rights to freedom of expression and association.

There appears to be no evidence to suggest that Kim Ha-ki's statements while in detention in North Korea posed South Korea any security threat of a kind which would justify imprisonment. His detention for divulging "state secrets" appears to be politically motivated and in violation of international standards protecting freedom of expression and the right not to be detained arbitrarily.

For many years Amnesty International has called for the National Security Law to be amended, in accordance with international standards. Many of the law's vaguely-worded provisions have been used to imprison people for the non-violent exercise of internationally-recognized rights to freedom of expression and association. During 1996, some 490 people were detained under the National Security Law, many of whom were considered by Amnesty International to be prisoners of conscience.



인권 자료실		
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# amnesty international

## REPUBLIC OF KOREA (SOUTH KOREA) Hidden victims: the long-term political prisoners

May 1997

SUMMARY

AI INDEX: ASA 25/23/97

DISTR: SC/CO/GR

This report focuses on the cases of long-term political prisoners who were convicted unfairly during the 1970s and 1980s. Sentenced to long prison terms for national security offences under past governments, they are South Korea's forgotten prisoners.

Amnesty International has documented 20 of these cases, but believes there may be at least a dozen more. This report describes the situation of these prisoners and profiles seven individual cases. A list of the 20 prisoners is included at the end of this report.

These prisoners were arrested and tried at a time when human rights violations were widespread and in the context of a divided Korea. They were convicted of passing "state secrets" to North Korean agents and other espionage activities.

The prisoners were arrested illegally, held in incommunicado detention for a long period of time and claim that they were forced to confess under torture. Amnesty International believes that these prisoners were convicted largely on the basis of confessions extracted under torture.

Under the National Security Law the term "espionage" is vaguely-defined and has been used to imprison people for the non-violent exercise of their rights to freedom of expression and association. The definition of "state secrets" has included information which is publicly available in South Korea.

The long-term political prisoners have been left without an effective legal remedy. Lawyers and human rights activists in South Korea have been unable to secure a retrial for these prisoners and the government has refused to review their cases. In South Korea there is no independent body or individual responsible for the protection of human rights and the investigation of reported human rights violations. There has been no systematic and independent investigation into past human rights violations.



It is the government's responsibility to review the cases of long-term political prisoners who were convicted unfairly, but it has not taken on this responsibility. Amnesty International now urges the government to find an effective means of redress for these victims of human rights violations committed under previous governments

A presidential election will be held in December 1997. As the campaign gets underway, Amnesty International is calling on the current government, the main political parties and individual legislators to ensure that the cases of long-term political prisoners are not forgotten in the election campaign.

Amnesty International makes the following recommendations:

- **Review or release:** Amnesty International calls for a review of all the cases of long-term political prisoners who were convicted during the 1970s and 1980s where there are reports that the prisoners were tortured and convicted after unfair trials. In some well-documented cases Amnesty International is convinced the charges are unfounded and calls for the prisoner's immediate and unconditional release.
- **Investigation of past human rights violations:** Amnesty International calls on the government, the main political parties and individual legislators to find an effective means of investigating past human rights violations. This is of particular urgency in the cases of long-term political prisoners who are still in prison.
- **Prison conditions:** Amnesty International calls on the government to ensure that the conditions of imprisonment for long-term political prisoners are in conformity with international human rights standards.

**KEYWORDS:** PRISONERS OF CONSCIENCE1 / POLITICAL PRISONERS1 / LONG-TERM IMPRISONMENT1 / TRIALS1 / CONFESSIONS1 / INCOMMUNICADO DETENTION / PRISON CONDITIONS / SOLITARY CONFINEMENT / TORTURE/ILL-TREATMENT / MENTAL HEALTH / ILL-HEALTH / AGED / POSSIBLE POC / STUDENTS / BUSINESS PEOPLE / LEGISLATION / ESPIONAGE / ELECTIONS / PHOTOGRAPHS / PRISONERS' TESTIMONIES / PRISONERS' LISTS /

This report summarizes a 9-page document (3683 words), *Republic of Korea (South Korea), Hidden victims: the long-term political prisoners* (AI Index: ASA 25/23/97) issued by Amnesty International in May 1997. Anyone wishing further details or to take action on this issue should consult the full document.

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM**



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**REPUBLIC OF KOREA  
(SOUTH KOREA)**

**Hidden victims: the long-term  
political prisoners**



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# REPUBLIC OF KOREA (SOUTH KOREA)

## Hidden victims: the long-term political prisoners

There are over 50 long-term political prisoners in South Korea, half of whom are over the age of 60. They have all spent over seven years in prison, and some have been in prison for several decades. Sentenced to long prison terms for national security offences under past governments, they are South Korea's forgotten prisoners.

This report focuses on the cases of long-term political prisoners who were convicted unfairly during the 1970s and 1980s. Amnesty International has documented 20 of these cases (all of whom are men) but believes there may be at least a dozen more. In all of the cases documented by Amnesty International, the evidence strongly supports the view that they are the victims of human rights violations.

These prisoners were arrested and tried under South Korea's National Security Law. Many were students and businessmen at the time of their arrest. Some had travelled abroad and had been in contact with North Koreans; some had lived in Japan or had relatives in Japan. They were accused of passing "state secrets" to North Korean agents in Japan or other countries and other espionage activities. In these cases there is evidence of illegal arrest, incommunicado detention for a long period of time, claims by the prisoners that they were forced to confess under torture and a lack of facilities in the preparation of a defence. Amnesty International believes that they were convicted largely on the basis of confessions which were extracted under torture.

These prisoners were arrested and convicted at a time when human rights violations were widespread. During most of these two decades the country was ruled by authoritarian military governments. General Park Chang-hee seized power in 1961 and held the office of President until his assassination in 1979. Another army general, Chun Doo-hwan, became President in 1980 and held office until 1987 when he was forced by popular protests to call a direct presidential election. He was succeeded by Roh Tae-woo who held office until 1993. In 1996 two of these former presidents, Chun Doo-hwan and Roh Tae-woo, were sentenced to long prison terms on charges which included corruption and human rights violations.

The long-term political prisoners were convicted in the context of a divided Korea. Since the Korean War (1950-53) the governments of North Korea (the Democratic People's Republic of Korea) and South Korea (the Republic of Korea) have prohibited almost all contact between citizens of the two countries. In South Korea, unauthorized contacts have often resulted in imprisonment under the National Security Law. The National Security Law provides long prison terms for unauthorized contacts with North Koreans, for "praising" and "benefitting" North Korea and forming or joining organizations alleged to be pro-North Korean. It also provides long sentences or the death penalty for "espionage" and passing "state secrets" to North Korea. However, the term "espionage" is vaguely-defined in the National Security Law and has sometimes been used to imprison people who were



exercising their rights to freedom of expression and association. The definition of "state secrets" has included information which is publicly available in South Korea.

The long-term political prisoners are currently held in a number of different prisons throughout the country. Most are held in single cells and some have little contact with other prisoners. Conditions of imprisonment vary from prison to prison, and from prisoner to prisoner. Some prisoners appear to be in good health and are allowed to associate with other prisoners. Others are held in solitary confinement and are not allowed to mix with other prisoners. Some of the prisoners are reported to be suffering from psychological problems as a result of long-term isolation. Some suffer from digestive ailments, rheumatism, high blood pressure and other illnesses. Medical facilities in South Korean prisons are generally poor and most prisons have only one part-time doctor. Prisons are virtually unheated in winter.

Some of these prisoners are under constant pressure from the prison authorities to "convert", meaning to sign a statement renouncing their real or alleged communist views. Those who refuse to do this are not considered for release on parole and generally have fewer rights and privileges than other prisoners. For example, visits and reading material may be restricted.

It is often difficult for long-term political prisoners to communicate with the outside world. While some are permitted to send letters to friends and supporters at home and abroad, others are not permitted to do so. While some are allowed visits from friends and supporters, others are only allowed to see close relatives. These rules sometimes appear to be applied in an arbitrary manner. During a visit to South Korea in September 1996 an Amnesty International delegation was denied access to two long-term political prisoners in Taejon Prison on the grounds that Amnesty International had failed to fulfill the "procedural requirements". However, it was not clear what these requirements were, since the delegates had obtained prior written authorization for the visit from the Ministry of Justice.

It is the government's responsibility to review the cases of long-term political prisoners who were convicted unfairly, but it has not taken on this responsibility. In South Korea there is no independent body or individual responsible for the protection of human rights and the investigation of reported human rights violations. There has been no systematic and independent investigation into past human rights violations.

For several years human rights lawyers and activists in South Korea have sought retrials for some long-term political prisoners, as a means of obtaining redress. Under South Korea's Code of Criminal Procedure a retrial may be granted if it is proved that evidence was forged, testimony was false and when new "clear evidence" is discovered. But the requirements for a retrial have proved to be extremely difficult to meet and as far as Amnesty International is aware, no long-term political prisoner has secured one.

The statute of limitations on public prosecutions means that it is impossible to prosecute those responsible for human rights violations inflicted on long-term political