

ROK2.11

# BROKEN PROMISES, UNFULFILLED DREAMS

Human Rights and Democracy in South Korea



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THE ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS

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**THE ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS**

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Opposition to injustice will be denounced as radicalism or  
branded as subversion. . . .But the sharpest criticism often goes  
hand in hand with the deepest idealism and love of country.

Robert F. Kennedy

#### ACKNOWLEDGEMENTS

Robert F. Kennedy believed that one person can make a difference, and that each of us should try. For over two decades, the Robert F. Kennedy Memorial has been dedicated to perpetuating his vision. The Memorial honors women and men who, like Robert F. Kennedy, refuse to remain indifferent in the face of human suffering.

The Robert F. Kennedy Human Rights Award recognizes individuals who, at great personal risk, struggle against government oppression. The RFK Center for Human Rights provides award recipients with the human, political, and financial resources which they urgently need.

In 1987, the RFK judges selected South Korean human rights activists, Kim Keun Tae and In Jae Keun, to receive the RFK Human Rights Award. Since then, the RFK Center has taken a special interest in South Korea. This Report follows after a mission to South Korea which is discussed in the Preface to the Report.

The Robert F. Kennedy Memorial Center for Human Rights is most grateful to everyone who contributed to this report. The women and men in South Korea who shared their insights and experiences with us are foremost on the list. We are indebted to the many people in the United States who helped to make this report possible, including Edward J. Baker, Marcia Greenberg, Kisop Sim, Ben Q. Limb, Joseph P. Manguno, Helet Merkling, Anna Park, Jiwon Park, Edward W. Poitras, and Dr. Jeffrey Sachs.

Our sincere wish is that the people of South Korea will continue striving towards a better tomorrow and to fulfilling their dreams of freedom and democracy.

Kerry Kennedy Cuomo  
Executive Director  
RFK Center for Human Rights

HUMAN RIGHTS IN SOUTH KOREA: MAY 1992.

A REPORT BY THE ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS.

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## 1. Preface.

This report about the status of democracy and human rights in the Republic of Korea ("ROK") follows a mission to South Korea in February 1992 by a delegation from the Robert F. Kennedy Memorial Center for Human Rights ("RFK Center"). The six members of the delegation included: Kerry Kennedy Cuomo, Executive Director of the RFK Center; Marcia E. Greenberg, who worked as a Program Director at the RFK Center; Kisop Sim, Information Director of the Korean Institute for Human Rights; Ben Q. Limb, a Korean lawyer in New York City; Joseph P. Manguno, research fellow at the Institute for European, Russian and Eurasian Studies and a former Bureau Chief of the Asian Wall Street Journal in Seoul; Professor Edward W. Poitras of the Southern Methodist University, who lived in South Korea for more than 30 years; and Dr. Jeffrey Sachs, President of EcoLink, who represented Congressman Thomas J. Downey of New York.

During the mission, the delegation met with a wide range of people, including representatives from the South Korean Ministries of Foreign Affairs and Justice, and the National Police Administration. Further meetings took place with the United States Ambassador and representatives of the U.S. Embassy in Seoul. The delegation also met with Kim Young-Sam, Executive Director of the ruling Democratic Liberal Party, and with Kim Dae-Jung, President of the largest opposition party, the Democratic Party. Families and friends of political prisoners, members of the dissident community and lawyers also met with the delegation. Discussions centered on the continued incarceration and persecution of prisoners of conscience and political dissidents, the application of security laws, and the government's conversion practice. The delegation also took into account additional information about the human rights situation in South Korea in preparing this report.

The recommendations of the RFK Center delegation to the government of the Republic of Korea are contained in chapter one of this report. The foreword provides some historical background and discussion of the democratization process in South Korea. The third chapter describes the National Security Law ("NSL") and the application of this infamous law by the South Korean government. The last chapter examines the government's systematic practice of pressuring prisoners to write statements of "conversion," an illustration of the South Korean government's intolerance of dissenting views and its continuing hostility towards anyone accused of being sympathetic towards North Korea.

The RFK Center has sponsored three fact-finding missions to the ROK. In each case, the RFK Center delegation evaluated the progress made towards fulfilling President Roh Tae Woo's inaugural promises on February 25, 1988 that the long era of political oppression in South Korea was drawing to a close and



that democratic progress would be made.

This report calls attention to violations by the ROK government of its obligations under the South Korean constitution (as amended by a public referendum in November, 1987) and under the International Covenant on Civil and Political Rights, which the government ratified in 1990.

While the government of President Roh proudly points to certain indices to suggest progress towards democratization, the delegation found the underlying reality to be different. Despite the often cosmetic changes in some of the laws and in the practices of political and law enforcement authorities, the government continues to control the people of South Korea through repressive measures which are in some ways more sophisticated and insidious than before President Roh took office.

The RFK Center delegation found that the government's security laws play a pivotal role in the systematic violation of the rights of South Korean citizens. Three mechanisms both exemplify and fortify that system of control: (1) the National Security Law ("NSL"), which often serves to rationalize imprisonment of political dissidents; (2) the practice of "conversion" or "repentance," which makes the release of political prisoners contingent upon the prisoners' confession and renunciation of their political beliefs; and (3) the Social Observation Act ("SOA"), which authorizes an administrative procedure for surveillance and even reimprisonment of political prisoners formerly incarcerated under security laws.

The history and the current application of the NSL and the SOA illustrate the superficiality of the government's touted democratization efforts. The draconian National Security Law was enacted at the height of the Cold War, ostensibly to protect South Korea from espionage and sabotage sponsored by the North Korean government. The NSL has functioned, however, as a weapon directed internally against critics of the South Korean government.

The 1991 amendments to the NSL were weak and ineffective.<sup>1</sup> The vague provisions of the NSL continue to exploit the government's rationale of state security, especially the supposed military threat from North Korea, to justify political persecution of South Koreans.

The enactment of the Social Observation Act ("SOA") followed only four months after the much heralded repeal in May 1989 of the Public Security Law of 1975. The SOA imposes a revised and less obvious system of control on many former political

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<sup>1</sup> See further discussion below, chapter 4.

prisoners.<sup>2</sup>

Many people, both inside and outside South Korea, expected a gradual reduction in the political use of these security laws during the years of declared "democratization" under President Roh. All attempts to repeal or revise such laws in any meaningful way, however, have failed. These security laws continue to be used for political control and intimidation of South Korean dissidents.

Although Roh administration officials who met with the delegation insisted that the government respects human rights, they also emphasized their conviction that national security considerations still required the restriction of these rights in order to protect against the security threat which they claim still is posed by North Korea. This report challenges the Roh government's anomalous and self-contradictory assertions that the government no longer considers North Korea as an enemy,<sup>3</sup> and yet that the "special situation" of North Korea's security threat rationalizes continued domestic repression. The ROK government has also sanctioned bilateral agreements and trade with Pyongyang, and cross border visits are aimed at reducing fraternal tension and increasing economic cooperation on the peninsula.<sup>4</sup> Despite formal cooperation and exchange agreements and an easing of tensions between the South and North Korean governments, the Roh government imprisons hundreds of South Koreans each year for violations of the NSL on grounds which amount to "aiding, abetting or consorting with an 'enemy'," North Korea.

The RFK Center protested these obvious contradictions and human rights abuses to the South Korean authorities. The Roh government responded by denying that it harasses, detains,

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<sup>2</sup> See discussion of Social Observation Act, chapter 5.

<sup>3</sup> Roh Tae-Woo made this statement in a special statement on July 7, 1988. Also, see "News from AsiaWatch," December 1, 1990, page 5.

<sup>4</sup> The Agreement on Reconciliation, Non-Aggression, and Exchanges and Cooperation was signed by Prime Minister Chung Won-Shik of South Korea and by Premier Yon Hyung-Mok of North Korea on December 13, 1991. The Agreement essentially confirms that both countries will strive for peaceful unification, advance common national interests and prosperity, and carry out exchanges and cooperation in diverse fields, such as science, technology, education, literature, the arts, health, sports, the environment, publishing, and journalism. Implementation of this accord will be facilitated by joint committees, including a South-North Economic Exchanges and Cooperation Committee.



arrests or imprisons Korean citizens for their political views, or that it holds any political prisoners. The ROK Ministry of Justice insisted that legal punishments are imposed only upon those who have violated South Korean laws. Ministry officials said that this category included those people who participate in violent demonstrations, those who incite such demonstrations through speech or writings, and those who praise, contact or visit the people of North Korea without prior government approval. Several independent human rights organizations agree that hundreds of political prisoners remain behind bars in South Korea exclusively for their beliefs or for pursuing the nonviolent expression of those political beliefs.<sup>5</sup>

Human rights abuses in South Korea are serious and pervasive enough to constitute systematic violations of the International Covenant on Civil and Political Rights. The RFK Center urges the ROK government to comply with its stated commitments under its constitution and its obligations under international human rights laws.

The RFK Center calls on all those who are concerned for the people of South Korea, for the democratic future of the Republic of Korea, and for early reunification on the Korean peninsula, to condemn the Roh government's reprehensible and unwarranted human rights violations, in the hope that all South Koreans may soon enjoy the free exercise of their human rights.

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<sup>5</sup> See: "News from AsiaWatch," supra; several Amnesty International reports about human rights in South Korea, including a Statement of Amnesty International delivered at a seminar on South Korea at the European Parliament, Strasbourg, on February 13, 1992, and a report in March, 1992: "South Korea: Reported Ill-Treatment of Teachers."

## 2. Foreword.

Korea was a unified and independent nation until Japan annexed it in 1910. Celebrations of liberation from Japanese rule in 1945 were cut short by the division of Korea. After a period of tumult, the Republic of Korea and the Democratic People's Republic of Korea were established in 1948 and the country has remained divided ever since. The rigid separation into the Communist North and anti-Communist South set the stage for the Korean War.

One of the most effective tools of political control for successive South Korean regimes has been the specter of military invasion by North Korea, a particularly convincing argument to those Koreans who experienced the brutality of the fratricidal Korean War.

In 1961 a military coup led by General Park Chung Hee ended a brief period of democracy and established a dictatorship which lasted until 1979. The renewed promise of democracy was destroyed within months when a retired general, Chun Doo Hwan, took power in the ROK through a bloody military coup. The Chun regime continued extreme repression, torture and pervasive control of South Korean citizens. Thousands of arrests, widespread torture, sham trials, executions, deaths and disappearances, censorship, travel restrictions, and many other violations of human rights occurred during these military dictatorships.

In June 1987, under siege from nationwide citizens' protests, President Chun acceded to popular demands for open elections. After a hotly contested election marred by widespread accusations of fraud and other voting irregularities, General Roh Tae-Woo, who was President Chun's hand-picked successor and classmate at the military academy, was declared the winner.

The international community accepted the election results, despite reports of rampant fraud and violence which undermined the credibility of the process.

Meanwhile, South Koreans who led the struggle for political pluralism and human rights, are left to suffer under an obdurate government.

Despite government promises of democratic reforms and some improvement in the political situation in South Korea, the government has reneged on many of its promises, including local political autonomy and the dismantling of the immense security apparatus and security police. The government's apparatus of control and political oppression remains in operation. The most fundamental violation of the government's promise of democratization has been the Roh government's continued suppression of political dissent. To this day, the state uses



security laws and other methods of control to inhibit freedom of speech, movement and association of South Koreans, as is discussed in the following chapters.<sup>6</sup>

Although Korean reunification was not an issue in the recent National Assembly elections in South Korea, it remains of vital concern for South and North Korea. Reunification talks have been initiated several times. The prospect for reunification appeared to have improved in September 1990 when the prime ministers of the two states met in Seoul for the first time. Increased contact between the two countries ensued, including direct trade relations and some visits between citizens from both countries. The Republic of Korea passed the South-North Exchange and Cooperation Law in August 1990 to authorize its citizens, upon application, to visit and trade with North Korea. However, the South Korean government refuses to allow citizens accused of being dissidents to meet with North Korea. The government of President Roh cracked down on South Korean citizens who tried to attend the inaugural meeting of Pomminnyon ("Pan-National Alliance for the Reunification of Korea") in November 1990 in Berlin.

It is paradoxical and distressing that South Korea's military strengthening and economic progress is not mirrored in its political practices. Although the ROK's economy and political influence have flourished in the Pacific region and in the eyes of the world, full progress toward democracy has been inhibited. Opposition parties, dissident groups, labor leaders, and student activists report little relief from government surveillance and harassment. Attorneys' groups in South Korea maintain that arbitrary arrests, and unlawful detention and imprisonment, as well as the mistreatment of prisoners, continue without reprieve.

Despite the Roh government's claim that democratization has been achieved, controls designed to perpetuate the rule of military and economic power elites continue to operate. These controls cause serious violations of South Korean citizens' fundamental rights. The restrictive measures of the South Korean government and the resulting human rights abuses are discussed in the following chapters.

The ROK joined the United Nations as a member in September 1991, thereby becoming formally bound to the U.N. Charter and the

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<sup>6</sup> Reports differ about the number of political prisoners incarcerated in South Korea, but many human rights organizations and commentators agree that there have been more political arrests during the administration of President Roh than during the longer rule of Chun Doo Hwan. Most recently, the Democratic Party of the ROK issued a statement that there are still 963 political prisoners incarcerated.

Universal Declaration of Human Rights. As a member of the family of nations, and in terms of the ROK Constitution, the government has a concomitant obligation to respect human rights and work towards democratic management of its citizens' rights and aspirations for full democracy.



### 3. Recommendations.

The RFK Center urges the government of the Republic of Korea ("the government") to adopt immediately the recommendations set out below, before the second anniversary of the ROK's ratification of the International Covenant on Civil and Political Rights ("the Covenant") in July, 1992. The ROK will be celebrating its first year of membership in the United Nations in September, 1992. The delegation suggests that appropriate commemoration should include observance by the government of its obligations under the international human rights covenants. The RFK Center specifically recommends that:

1. The government rescind the National Security Act and comply with the government's obligations under the Covenant, specifically articles 1-7, 9, 12(2), 18, 19, 21, and 22. That Act should be replaced only with laws specifically needed to defend South Korea against genuine external military threats;
2. the government issue explicit orders prohibiting public officials from selectively applying the National Security Act, the Social Observation Act, the Assembly and Demonstrations Law, and the Publication Law, to restrict the nonviolent expression of political beliefs. The government should create an independent ombudsman or special investigator office whose mandate is to ensure full compliance with such orders by officials of the Ministry of Justice, the Public Prosecutors' office, and the National Police Administration with the policy against selective enforcement. The government should invest such an office with effective powers of investigation and enforcement against violations of such orders;
3. the government entirely repeal the Social Observation Act and discontinue surveillance of former political prisoners and their families. This law violates the ROK Constitution, in particular the provisions of: article 13(3), the citizen's right not to suffer unfavorable treatment because of an offense committed by a relative; article 14, freedom of residence and the right to move at will; article 17, the right to privacy; article 18, the right to private correspondence; article 19, freedom of conscience; article 20, freedom of religion; and article 21, freedom of speech, assembly, and association. The SOA also violates the Covenant, specifically article 19, which enshrines the right to privacy, and article 22, which confirms the right to freedom of association;
4. members of the ROK National Assembly exercise their power under article 61 of the ROK Constitution to "inspect affairs of state" by holding public hearings and a public investigation into the continued incarceration of political prisoners;
5. the government review the cases of all political prisoners,

especially those sentenced and imprisoned before President Roh's election. After such review, the government should immediately release all political prisoners found to have been convicted for the nonviolent expression of their beliefs. Such action will be consistent with the spirit of article 12(7) of the ROK Constitution. Coerced confessions in any event contravene that article of the Constitution, which forbids the introduction of coerced confessions as evidence in a trial;

6. the government abolish the practice of conversion, which violates the rights to freedom of conscience and religion guaranteed by article 19 of the ROK Constitution and by article 18 of the Covenant;
7. the government publicly disclose the names of all prisoners incarcerated under the NSL, and the Law on Assembly and Demonstrations, and those subject to the SOA. The ROK National Assembly should hold public hearings on political prisoners and direct the Ministries of Justice and Home Affairs (including the Agency for National Security Planning), as well as the National Police Administration, to produce the lists of political prisoners, consistent with articles 9 and 14 of the Covenant;
8. the government publicly disclose all the evidence which was used to convict and incarcerate political prisoners. The evidence disclosed should at least include: all indictments, transcripts or records of testimony, written evidence, and all other documents relevant to the courts' findings and sentences, consistent with article 10 of the Covenant;
9. the government immediately release all prisoners of conscience, including those whose names appear on Appendix "A" to this report, and also Mr. Kim Keun-Tae and Ms. Im Su-Kyong, as well as Reverends Moon Ik-Hwan and Moon Kyu-hyam.
10. the government permit all political prisoners to receive visits, including visits by international human rights organizations, except where such visits pose an immediate and violent threat to the security of the correctional facility;
11. the government take full and effective measures to ensure the complete elimination of torture, including beatings and other uses of force, both physical and psychological, in all jails, detention facilities and prisons. The government should promulgate and rigorously implement explicit rules of conduct for public officials to prohibit such violations, consistent with article 7 of the Covenant;
12. the government institute education and training programs for the police, justice, and prison authorities which support the humane and equal treatment of prisoners, consistent with article 10 of the Covenant;



13. the government adopt review and disciplinary procedures to allow immediate investigation of any allegations of discrimination, torture and brutality against prisoners. Such procedures should also allow a complainant legal access and access to the medical doctor of his/her choice. Complainants' legal representatives should be allowed to participate in investigations of misconduct or torture; and that

14. the government's policies for the treatment of prisoners at least be in accordance with the provisions of the United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, set forth in Appendix B to this report, particularly those pertaining to the elimination of torture and beatings.

#### 4. The National Security Law.

##### A. Introduction.

In a country that was ravaged by war with North Korea only a generation ago, a concern for national security is legitimate and understandable. Unfortunately, in South Korea that concern has manifested itself in the form of repression of peaceful dissent and the imprisonment of government critics. This report is most concerned with the National Security Law ("NSL")<sup>7</sup>, the linchpin of the government's national security enforcement, and with the exploitation of this law by the ROK government for its political purposes.

The NSL was first enacted in 1948, and the Anti-Communist Law in 1961. The Anti-Communist Law was repealed in 1980. The NSL contains many provisions similar to those of the revoked Anti-Communist Law allowing the government to control and severely punish "anti-state" activities in South Korea. According to the ROK government, the NSL was specifically enacted because the insurrection provisions of the ROK Criminal Law were not applicable to the non-violent "anti-state activities of [North Korea] and domestic leftist radicals, and also because North Korea ought to be unified with the South eventually."<sup>8</sup>

The NSL prescribes the death penalty or long sentences of imprisonment for "anti-state" activities, including "unauthorized meeting, communicating with, or contacting [North Korea]" as well as for the "negligence to report an obvious violator of the [NSL] to law enforcement authorities."<sup>9</sup>

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<sup>7</sup> The text of the NSL is on file at the Robert F. Kennedy Memorial Center for Human Rights.

<sup>8</sup> The ROK government's rationalization of the need for the NSL is also contained in "Facts and Fiction: Human Rights in Korea," published by the Korean Overseas Information Service, Seoul, Korea, December, 1990 ("Facts and Fiction"). See pages 27-51 of "Facts and Fiction" for the government's defense of this law.

<sup>9</sup> See: Amnesty International Report on South Korea, September, 1991. This report explains inter alia that the failure to report violations of the NSL was punishable by imprisonment until amendments to the NSL in 1991. Amnesty reports further that since these amendments, if a relative fails to report violations of article 4 (acts of treason, espionage, or sabotage by a member of an anti-state organization) and of article 5 (willing provision of material and assistance to anyone violating article 4), this offence is either lessened or waived by the state.



In addition to the NSL, the South Korean government recently passed The Special Act Governing Inter-Korean Exchanges and Cooperation, which prescribes procedures for civilian interaction between the ROK and North Korea. The law contains punitive provisions against travel to and other contacts with North Korea without prior permission from the Minister of National Unification. Cultural, sports, academic, economic and other exchanges are all subject to ministerial approval.

Opposition efforts to overturn the NSL collapsed in early 1989 when the government launched a major crackdown against its parliamentary and extra-parliamentary critics. In May 1991, the ruling Democratic Liberal Party unilaterally passed its own amendments to the NSL. These amendments still contain significant flaws which are discussed below. The stated purpose of the NSL remains "to control anti-state activities which endanger the national security, so that the security of the state as well as lives and freedom of the citizens may be secured."<sup>10</sup>

The ROK government's claims that the NSL is not used as a tool of control and repression and that the NSL does not unjustly restrict any right or freedom of citizens, have been denounced by human rights groups, both within and outside Korea.<sup>11</sup> Even the U.S. Department of State ("DOS"), which is typically less critical of human rights abuses than independent human rights organizations, considers one of two "principal remaining areas of human rights problems [to be] the use of broad security laws which, although designed to thwart subversion by forces aligned with North Korea, are sometimes used to punish the nonviolent expression of opinion or the exercise of freedom of association."<sup>12</sup>

#### B. The Government's Defense.

Government officials consistently justified the ongoing application of the NSL by citing South Korea's "special situation," the perceived security threat from North Korea. They argued that while the world has witnessed the demise of Communism, the Korean peninsula remains an area of significant military tension. South Korean officials insisted that hostility from North Korea remains a serious threat and asserted that the NSL is aimed at frustrating Pyongyang's long-standing strategy of using force to make the South Communist. Government

<sup>10</sup> Chapter I, article 1(1) of the NSL.

<sup>11</sup> See reports by Amnesty International and AsiaWatch referred to in this Report.

<sup>12</sup> See 1991 U.S. DOS Report on Human Rights Conditions in South Korea, paragraph 4, published in early 1992.

representatives claimed that South Korea must retain the NSL to protect itself against security risks, as long as North Korea adheres to that strategy.

The South Korean government demands that private civilian exchanges and cooperation with North Korea must be approved by the government on the basis of a "peaceful unification policy conforming to the basic order of freedom and democracy, as well as to public consensus."<sup>13</sup> The South Korean government contends that the NSL prescribes punishment for unauthorized visits to and contacts with North Korea in order to prevent the government's right to represent the sovereign state from "being usurped." According to the government, unauthorized contact "denies the legitimacy of the democratically elected government."<sup>14</sup>

This rationalization is clearly unacceptable. Although South Korea may continue to endure difficult geopolitical pressures, (since moves toward democracy in China have regressed since June, 1989 and China and North Korea remain vestiges of Stalinism), in view of the dissolution of the Soviet Union and a breakthrough in North/South Korean relations, the security threat has, by most accounts, radically diminished.

The government of South Korea has actively pursued economic and cultural exchanges and cooperation with North Korea. Almost four years ago, President Roh Tae Woo issued a "Special Declaration in the interest of National Self-Esteem, Unification and Prosperity ... to actively seek exchanges and cooperation with North Korea and improved relations with all socialist countries."<sup>15</sup> The President later articulated a "Korean National Community Unification Formula" which called for developing a Korean commonwealth to join the South and the North in a single national community as an interim stage toward full unification.<sup>16</sup>

ROK officials, pursuing a strategy of detente, have often lauded the warming of relations between North and South Korea. Most analysts agree that the likelihood of open conflict and invasion on the Korean peninsula is low. As is demonstrated by expanding economic and cultural cooperation and exchanges between

<sup>13</sup> See "Facts and Fiction", supra, page 43.

<sup>14</sup> See "Facts and Fiction," supra, page 45.

<sup>15</sup> On July 7, 1988, according to "Facts and Fiction," supra, page 41.

<sup>16</sup> In a speech before the National Assembly on September 11, 1989, according to "Facts and Fiction," supra, page 41.



South and North Korea, it appears that both countries are eschewing confrontation in favor of increasing interaction.

South Korean government officials nonetheless insisted that they will not liberalize or change their policies relating to alleged spies, saboteurs, and insurgents, or towards unauthorized contact by South Koreans with North Korea, until North Korea institutes coinciding reform. Such arguments are incompatible with the principles of democracy. Fundamental human rights cannot be used as bargaining chips during potential reunification negotiations.

#### C. Current Application of the NSL.

The ROK government continues to indiscriminately use the NSL to harass and punish its critics and political opponents. The 1991 U.S. Department of State Report on Human Rights conditions in South Korea confirms that:

"[T]he Government continued to arrest, indict, and bring to trial supporters, mostly students, of North Korea's "Juche" ["self-reliance"] ideology... and also to bring to trial members of the Advanced Masses Organization and the Socialist Workers Alliance under the National Security Law...[there were] credible reports that in separate incidents . . . over 50 other activists were arrested under provisions of the National Security Law, among them Moon Ik-Hwan and Prof. Park Soon Kyung. In September the Prosecutor General's office released a list of over 120 student activists, mostly supporters of Juche ideology and leaders of student groups wanted for violating the National Security Law and the Law on Assemblies and Demonstrations."

The government stifles criticism and dissent by arresting, and even by simply threatening to arrest, those who lead organizations critical of the government, or who speak or write against the government.

#### D. Applying Human Rights Standards.

##### (1). The Covenant.

The South Korean government's use of the NSL violates a number of articles of the Covenant. Article 9 of the Covenant guarantees the right to liberty and security of each person: "No one shall be subjected to arbitrary arrest or detention." The NSL violates article 9 insofar as the NSL allows for police discretion selectively to detain individuals to prevent conduct critical of the ROK government. Since the ROK government employs the NSL to punish its citizens for their beliefs, speech and association, the following provisions of the Covenant are also violated:

- (a) Article 18, which guarantees the right to freedom of thought and conscience;
- (b) article 19, which guarantees the right to hold opinions and to freely express those opinions;
- (c) article 21, which guarantees the right of peaceful assembly;
- (d) article 22, which guarantees the right to freedom of association; and
- (e) when the South Korean government uses the NSL to prevent its citizens, like Im Soo-Kyung, from traveling to North Korea or visiting Japan to meet with North Koreans, the government violates article 13(2) of the Covenant, which provides that: "Everyone shall be free to leave any country, including his own."

While a government is allowed to derogate from its obligations under the Covenant, such derogation is limited to "times of public emergency which threaten the life of the nation and the existence of which is officially proclaimed," according to article 4(1) of the Covenant. The ROK has not complied with the requirements of the Covenant in this regard.

The state's power to take measures which deviate from the standards of the Covenant is qualified by several conditions. The emergency must be officially proclaimed; the state must immediately notify the other parties to the Covenant of the provisions from which it has deviated and of the reasons for doing so; and the state of emergency cannot last indefinitely. A country may take measures to deviate from its obligations under the Covenant:

- (a) Only to the extent strictly required by the exigencies of the situation, and provided that such measures are not inconsistent with a country's other obligations under international law; and
- (b) without derogation from those articles which guarantee the rights to life or to freedom from slavery, torture or other cruel, inhuman, or degrading treatment or punishment.

The Covenant provides that everyone shall have the right to recognition everywhere as a person before the law, and everyone shall have the right to freedom of thought and conscience. Furthermore, persons cannot be held guilty of any criminal offense which results from any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed.

The basis which the ROK government offers for failing to abide by the Covenant is not acceptable. The security climate compels the conclusion that the current, indiscriminate use of the NSL goes far beyond what the situation in South Korea requires.



## (2). The ROK Constitution.

The amendments to the NSL, referred to above, supposedly guard against abuse of the law by requiring that the application of the NSL "be circumscribed by the limits minimally necessary to achieve the [law's] purpose." The amendments also prescribe a restrictive legislative interpretation of the NSL which requires that the law: "Shall not be interpreted broadly or in a way to put an unreasonable limit on the constitutionally guaranteed basic rights of the citizens."<sup>17</sup> These limits are inadequate because basic human rights are restricted in the name of national security.

(a) Article 37(2) of the ROK Constitution stipulates that "no essential aspect of the freedom[s] or right[s] [of citizens] shall be violated," even though those freedoms and rights may be otherwise restricted by law when "necessary for national security, the maintenance of law and order or for public welfare." The government's continued application of the NSL to silence its critics reduces the human rights guarantees enshrined in the ROK constitution to meaningless rhetoric.

(b) The ROK Constitutional Court has upheld the constitutionality of article 7 of the NSL which prescribes punishment for "praising, encouraging, sympathizing with or giving aid" to North Korea or "anti-state" organizations. Specifically, article 7(5) of the NSL penalizes anyone who produces, imports, duplicates, possesses, transports, distributes, sells or acquires documents, paintings, pictures or other media of expression for the purposes described in paragraph 7(1). This decision of the Court, however, is conditional upon the government not interpreting and applying the law so as to infringe upon basic human rights. The Court's decision has been lauded by the ROK government as evidence of the Constitutional Court's independence and liberal approach to constitutional interpretation.<sup>18</sup>

The government's unilateral amendments to the NSL in May, 1991 narrowed the circumstances for penalizing members or support of "anti-state" organizations to include cases where citizens have knowledge which "might endanger the existence and security of the state and the basic order of liberal democracy..."<sup>19</sup> The amendments to the NSL were apparently aimed at demonstrating compliance with the Court's decision. There is insufficient

<sup>17</sup> Chapter I, article 1(2).

<sup>18</sup> Constitutional Court ruling on April 20, 1990 in paper 89-HONGA-113. See "Facts and Fiction", page 33.

<sup>19</sup> See articles 5(2), 6(1), 7(1) and 8(1) of the ROK Constitution.

evidence, however, to demonstrate that the amendments have had more than a marginal effect on the district courts which try political cases.

(c) The amendments to the NSL are vague and inhibit the ordinary citizen's understanding under the constitution of what is in fact prohibited. Unauthorized contact by South Korean citizens has been systematically punished, while President Roh simultaneously pursues a policy of exchange with North Korea. The ROK government allows business representatives, athletes, and government officials to visit North Korea, while it excessively restricts the activities of its critics, such as the Reverend Moon Ik-Hwan and Im-Soo-Kyung.

(d) Arresting and prosecuting authorities are still endowed with overbroad discretion to apply the NSL, a glaring deficiency that allows for continued abuse by the authorities.

(e) The amendments to the NSL retain the definition of an "anti-state organization" as "an association or group ... organized for the purpose of assuming the title of the government or disrupting the state."<sup>20</sup> As events following recent student demonstrations illustrate, the arrests under the NSL and the concept of "disrupting the state" can apply to many activities, such as throwing firebombs or stones at the ROK riot police, irrespective of any connection with North Korea or any intention of ousting the government.

## E. Conclusions.

The NSL continues to function as an instrument of political control in South Korea and invites abuse of government power. Examples of such abuse abound, most notably in the case of Kim Keun-Tae, past recipient of the Robert F. Kennedy Human Rights Award and an Amnesty International Prisoner of Conscience, who was again arrested under the NSL in May, 1990, after denouncing government policies and calling for Korean reunification and radical social change. Numerous other instances exist of political prisoners jailed under the NSL, who do not have the same international renown or prominence in South Korea as Mr. Kim.

The persistent application of the NSL increases doubts about the future of democracy in South Korea and concern for political prisoners jailed under the provisions of the NSL. The restrictions imposed by the NSL on freedom of expression are unwarranted and unacceptable in a democracy. Selective enforcement of the NSL enables the ROK government to silence

<sup>20</sup> Chapter I, article 2(1) of the NSL.



popular dissent and invites government exploitation. Like corruption, the abuse of human rights has an insidious potential for self-perpetuation.

It is essential in the quest for democracy in South Korea that popular dissent and criticism be allowed, precisely to defend human rights and to guard against any government abuses. The change in government policy toward reunification and contact with the North also militates against the continued use of the NSL as a measure against critics of the Roh government. The NSL must be repealed to allow full popular participation in politics and to bring the ROK government into the league of democratic societies.

## 5. The Social Observation Act.

### A. Introduction.

The Social Observation Act ("SOA")<sup>21</sup> establishes administrative procedures by which the ROK government maintains strict control over the activities of political dissidents after their release from prison.<sup>22</sup>

According to article 1 of the SOA, the object of this law is to:

"[institute] security observation measure upon such persons who have committed specific crimes in order to prevent the danger of their recommitting crimes and promote their return to normal, sound social life, and thereby to maintain national security and social peace."

The SOA also provides that its measures should be "imposed upon such a person ... who is deemed to require observation [to] prevent ... [him from] recommitting the crime because there exists sufficient ground[s] to recognize that he ... [may] recommit ... the crime ... under security observation."<sup>23</sup>

The SOA prevents particular South Koreans citizens from enjoying a wide range of basic human rights. In fact, the SOA targets political prisoners who had been imprisoned for allegedly spying, propagating "anti-State" ideology or organizing "anti-State" groups; and those sentenced to "punishment heavier than

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<sup>21</sup> This law is sometimes referred to as the Social Surveillance Law, a variation which stems from differences in translation from the Korean. The text of the SOA is on file at the Robert F. Kennedy Memorial Center For Human Rights. The translation of the title of the SOA is found in the Korean Legal Center Series. Errors of English usage which appear in this report's citation of the SOA, arise from using the exact wording in that official translation.

<sup>22</sup> The precursor to the SOA, the Public Security Law of 1975, was repealed on 5/29/89. The SOA replaced the Public Security Law when the SOA became effective on 9/16/90.

<sup>23</sup> See article 4(1) of the SOA.



imprisonment, the total term of which is three years or more."<sup>24</sup> The SOA can be applied when a public prosecutor asks that security observation measures be implemented against a particular individual.<sup>25</sup>

Individuals subject to the SOA are branded as "security observed." They are required by law to comply with a variety of restrictions, including reporting to the local police. Article 4(2) of the SOA provides that:

"A person who ...[is subject to] security observation measure[s] shall, in such manner as provided in this Act, report the prescribed matters to the chief of the police station ... having jurisdiction over the area of his residence, and shall submit himself to security observation under the instructions of the chief of the competent police station within the limits of necessity to prevent recommitting crime."

Prisoners are required, upon their release, to disclose to the authorities where they will live and if they intend changing homes.<sup>26</sup> As soon as an individual is subject to the SOA, he must report the following information within seven days: his permanent address, place of registry, residence, name, date of birth, sex and resident registration number; the status of his family, fellow inmates and associates; his occupation, place of work, monthly income and financial status; his educational background and career; and the religion and church to which he belongs. The former prisoner must report changes in those matters within seven days.<sup>27</sup>

Subsequent reports must be furnished by "security observed" individuals every three months. These regular reports must detail the former prisoner's principal activities; personal matters concerning other persons who are also subject to security observation and with whom the reporting person has communicated or met, along with the date, time, place and contents of any communications; travel; and other matters which the police chief

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<sup>24</sup> See articles 2 and 3 of the SOA.

<sup>25</sup> See article 7 of the SOA. The next articles of the SOA prescribe the administrative process and establish a Security Observation Measure Review Board through which the security measures are imposed. These procedures violate principles of due process, as is described further in the Report.

<sup>26</sup> See article 6 of the SOA.

<sup>27</sup> See articles 18(1) and 18(3) of the SOA.

may direct the person to report.<sup>28</sup>

Moreover, pursuant to article 19 of the SOA, public prosecutors or police officers may employ additional means for observing former political prisoners. They may establish "close contact" with the "security observed" and always observe his behavior and environment, give the "security observed" further instructions and "take measures requir[ed] for the security observed to return a good member of society."<sup>29</sup> They may also, "when deemed especially necessary [to] prevent... the security observed ...from recommitting crimes," prohibit certain meetings with others who are also deemed "security observed," prohibit access to places of assembly and demonstrations, and demand that the persons appear at specified places for "protection or examination."<sup>30</sup>

According to article 5, security observation applies for two years after the prisoner's release from incarceration. However, certain provisions of the SOA in effect allow for indefinite "observation." Article 25 of the SOA provides that the two year period is interrupted if the "security observed" fails to submit the required reports.<sup>31</sup> The period is also interrupted if the security observation measure is suspended or the individual is detained for different, unrelated reasons.<sup>32</sup> Once so interrupted, a two year observation period begins anew, possibly leading (in effect) to lifetime probation for the former prisoner.

The SOA provides a range of penalties for failure to comply.<sup>33</sup> Penalties can amount to as much as 3 years of further imprisonment.<sup>34</sup>

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<sup>28</sup> See article 18(2) of the SOA.

<sup>29</sup> See article 19(1) of the SOA which illustrates both the ambiguity of the provisions of the SOA and the violation of South Korean citizens' right to privacy.

<sup>30</sup> See article 19(2) of the SOA.

<sup>31</sup> See article 25(2) of the SOA.

<sup>32</sup> See article 25(3) of the SOA.

<sup>33</sup> See article 27 (Penal Rules) of the SOA.

<sup>34</sup> These penalties are imposed administratively, apparently without an assessment of such alleged violations through the due process of law.



## B. Current Application of the Social Observation Act.

The government of the ROK applies the SOA as an oppressive control measure to monitor its critics. The government continues in effect to punish former political prisoners after they have completed sentences meted out by the courts. The SOA is a powerful weapon in the arsenal of repression employed by the Roh government.

The U.S. Department of State Country Report on Human Rights Practices in 1991 in South Korea ("the U.S. DOS Report")<sup>35</sup> confirms that many political prisoners and religious figures are still subjected to varying degrees of government surveillance. Security officials have admitted that thousands of former NSL detainees remain under surveillance by domestic, civil, military and security agencies and by the police.<sup>36</sup>

In addition to the restrictive substance of the SOA, the law also has two restrictive procedural aspects:

(1) Former prisoners are often not arrested immediately upon violation of its provisions, but instead live with the knowledge that the government notes and documents such alleged violations in order to justify an arrest whenever it may so choose.

(2) The provisions of the SOA are administrative and no provision is made for due process. The SOA does not allow for a trial procedure where the former political prisoner can defend himself.<sup>37</sup>

The intimidating surveillance of South Korean dissidents can be illustrated by the experiences of a former political prisoner (whose identity may not be disclosed for protection), who reported the constant threat of possible arrest for refusal to

<sup>35</sup> Published in February, 1992.

<sup>36</sup> Consistent with this, section 1(f) of the U.S. DOS Report states in the section about Arbitrary Interference with Privacy, Family, Home, or Correspondence, that "many political and religious figures are still subjected to varying degrees of government surveillance... Security officials have admitted that thousands of former NSL detainees remain under surveillance."

<sup>37</sup> Although the U.S. DOS Report does not discuss the SOA specifically, section 1(d) on Arbitrary Arrest, Detention, or Exile identifies the SOA as one of "several restrictive laws [that] permit the Government to detain persons whose views it considers dangerous, particularly people it considers involved in activities in support of North Korea."

comply with restrictions on the right of association, and for meeting with members of an association prohibited by the government.

## C. Applying Human Rights Standards.

### (1). The Covenant.

The Social Observation Act clearly violates many fundamental principles of international law as proclaimed by the Universal Declaration of Human Rights and protected by the Covenant.

(a) Because the SOA authorizes continuing surveillance and monitoring of former political prisoners after their release from prison, it violates their privacy rights as well as the privacy rights of their families and friends. The Covenant provides in article 12 that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."

(b) The right to freedom of association is enshrined in article 22 of the Covenant. This right is violated by those SOA provisions which authorize the police and state prosecutors to direct former political prisoners not to associate with certain individuals, organizations or groups.<sup>38</sup> Similarly, whenever a government order prevents a former political prisoner from attending a demonstration, such prohibition violates the right of peaceful assembly which is enshrined in article 21 of the Covenant.<sup>39</sup>

(c) The SOA violates fundamental human rights provided for in the article 19 of the Covenant, including freedom of speech and association, by restricting activities and by posing the threat to detain the "security observed." The SOA also infringes upon such additional rights as the right to hold opinions without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

<sup>38</sup> Article 22(2) of the Covenant allows restrictions on the right of association "which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." As is discussed with regard to the National Security Law, the situation in South Korea does not appear to satisfy the grounds for exception contemplated under article 22 (2).

<sup>39</sup> It is even worse when multiple orders affecting a number of former political prisoners prevent them from congregating or demonstrating peacefully to express their views or dissent.



(d) The SOA requirements which proscribe traveling by former political prisoners violates the right to freedom of movement, which is protected in article 13 of the Covenant. The requirements to report a person's religion and church affiliation violate the protection of freedom of religion provided for in article 18 of the Covenant.

(e) Insofar as the SOA prescribes sanctions and detentions without any prior hearing, it violates several provisions of article 9 of the Covenant, which provides that: "No one shall be subjected to arbitrary arrest or detention." The article also requires that those who are "arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Furthermore, in order to check possible abuse of detention powers by the police and the prosecutors, article 9(4) of the Covenant ensures that: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

(f) One of the more insidious results of the SOA is its effect on the legitimacy of the democratic process. Since the SOA prevents some dissidents from exercising their rights of free speech, association and organization, the SOA violates article 25(1) of the Covenant which protects the right "to take part in the conduct of public affairs, directly or through freely chosen representatives."

As a member of the UN, the ROK government should guarantee the provisions of the Universal Declaration of Human Rights. Furthermore, the ROK government is a signatory to, and hence obliged to comply with, the Covenant and the Optional Protocol thereto.

## (2). The ROK Constitution.

The SOA also violates several basic provisions of the ROK Constitution ("the Constitution").

(a) The SOA fundamentally violates article 37 of the Constitution which prohibits the legal restriction of freedoms and rights of citizens, except "when necessary for national security, the maintenance of law and order and for public welfare." Article 37 further qualifies this exception by directing that "even when such a restriction is imposed, no essential aspect of the freedom or right shall be violated." The criticism offered earlier of the government's rationale for the NSL, applies equally to the SOA. The SOA destroys the cornerstones of justice: The SOA presumes guilt without trial and also effectively imposes indefinite

probation upon released prisoners, without the benefit of due process.

(b) The SOA violates the fundamental presumption of innocence until guilt is proven, since this Act assumes guilt without any due process or lawful procedures to determine the guilt of a former political prisoner. As such, the SOA violates article 27(4) of the ROK Constitution, which guarantees the presumption of innocence "until a judgement of guilt has been pronounced." Furthermore, article 12 of the Constitution prohibits arbitrary arrest and preventive detention, but the SOA violates this provision as well, since "security observed" are in effect subjected to administrative detention by the ROK government through the various monitoring obligations which former political prisoners must meet (as set out above).

(c) A former political prisoner who is subject to "social surveillance" is not informed of the reason for such surveillance, despite the provisions of article 12(5) of the Constitution; neither is the "security observed" allowed to a prompt and open trial. The ROK Constitution enshrines the freedoms of speech, press, assembly, and association in article 21, all of which are violated by the provisions and application of the SOA.

(d) Under the provisions and the application of the SOA, the "security observed" is neither informed of the charges against him, nor presumed to be innocent until proven guilty, or offered the benefit of a trial, legal counsel, and an independent judiciary. In these circumstances, it follows that the political dissident's (the "accused's") right to make a statement under article 27(5) of the Constitution is absent.

(e) The SOA also violates articles 19 and 20 of the Constitution, which protects freedom of religion and conscience.

## D. Conclusions.

The SOA should be repealed. This law violates human rights protected by the Covenant and by the ROK Constitution. Amendments of the SOA will not suffice, because the very purpose of the law effectively serves to intimidate, harass, and otherwise violate the privacy, legal, and civil rights of South Korean citizens.



## 6. The Conversion Practice.

### A. Introduction.

The ROK government relies on a "conversion" practice to decide upon the release on parole or amnesty of political prisoners in South Korea. The conversion practice is exploited for political purposes by the Roh government, since it is used as a mechanism to make release from prison contingent upon a confession and retraction of dissident political views.

South Korea has a large number of long term political prisoners, some of whom have been held since the 1950's and others who were arrested before President Roh took office. According to a 1990 AsiaWatch Report, fifteen of the fifty seven long term prisoners held at the Taejon prison are serving life sentences; nineteen have served prison terms of thirty years or more; and 24 others have been incarcerated for twenty or more years. All but two of these prisoners have been charged with engaging in or aiding North Korean espionage activities.<sup>40</sup> Some political prisoners are held in solitary confinement, except for exercising one-and-a-half hours per day, and some of the oldest and the sickest prisoners are confined together in one cell. In many instances, the long term political prisoners are elderly and have been separated from their families, friends and communities for decades.

These prisoners have not been released by the Roh government, either through parole or through presidential amnesty, despite the fact that there are provisions in the ROK Criminal Code and Constitution which permit such release.

The ROK Criminal Code states that in order to qualify for parole: "A person under execution of penal servitude or imprisonment who has behaved himself well and has shown sincere repentance may be provisionally released by an act of the administrative authority when ten years of a life sentence or one third of a limited term has been served".<sup>41</sup> The power of amnesty is vested in the President in terms of article 79 of the ROK Constitution.

According to Ministry of Justice officials, the ROK government considers two procedures for early release: provisional release and pardon. Both procedures depend on the conversion practice which requires "self-reflection and

conversion" by a prisoner. This practice entails statements by political prisoners containing admissions of wrongdoing and repentance, and promises to change their ways.

According to the AsiaWatch Report, prisoners in South Korea are also subject to a prison ranking system. The authorities' treatment of prisoners is determined by this ranking system, which extends certain privileges to some prisoners, from extended visitation privileges and better prison clothing to favorable consideration for parole or amnesty. Prison officials make daily judgements about the prisoners' behavior, obedience to rules, and work performance according to the ranking system. A prisoner's offense and sentence can also play a role in determining his class in the ranking system. Prisoners who refuse to write conversion statements, however, are excluded from the ranking system and are subjected to discriminatory treatment. As a result, political prisoners who do not write conversion statements have almost no hope of parole or presidential pardon.

### B. The South Korean Government's Defense.

Government officials confirmed that the conversion practice has been institutionalized as a standard part of the ROK government's policy for prisoner release. The conversion practice does not involve ordinary prisoner rehabilitation, but rather ideological confession and expiation.

The system of compelling prisoners to write conversion statements appears to have its origins in the period of Japanese colonial rule in South Korea, from 1910-1945, when political prisoners were forced to admit their alleged crimes and recant their political beliefs. The ROK government continues to use that practice today. The procedure involves the completion and signature of a two-to-three page form by political prisoners convicted on security-related charges. This form contains the prisoner's name, background information on his case, and the offenses for which he was convicted. The prisoner has to write down his views on communism, democracy, religion, and what kind of life he intends to lead once released from prison.<sup>42</sup>

A representative from the Prison Administration section of the ROK Ministry of Justice asserted that conversion statements must include a prisoner's admission that he committed the crimes for which he was sentenced. Prisoners must also express a sincere understanding that such conduct was unlawful, and they must promise not to engage in such conduct again in the future.

Once the conversion statement is completed, an "examination committee" considers the statement and questions the prisoner

<sup>42</sup> See AsiaWatch Report, supra, page 3.

<sup>40</sup> See AsiaWatch Report of December 1, 1990 ("AsiaWatch Report"), page 1.

<sup>41</sup> See article 72 of the ROK Criminal Code of 1953, as amended in 1975 and 1988.



about the sincerity of the statement. The examination committee consists of six to eight members and includes members of the Agency for National Security Planning (formerly the Korean Central Intelligence Agency), the prison warden, and the section chief of the prison's education department. Thereafter, the committee's conclusions are forwarded to the Agency for National Security Planning where a final decision is made about the prisoner's sincerity.<sup>43</sup>

The South Korean government contends that it does not use coercive tactics in soliciting conversions, because a coerced conversion would fail to elicit the remorse necessary to insure prevention of future criminal activity. The government justifies conversion on the grounds that genuine repentance prevents prisoners from re-committing their crimes.

### C. Applying Human Rights Standards.

#### (1). The Covenant.

The ROK government's conversion practice violates international law and South Korea's obligations under the Covenant to safeguard freedom of expression, when political prisoners, incarcerated for the nonviolent expression of their political beliefs, are required to recant those beliefs.<sup>44</sup> The ROK government's practice requiring a statement of remorse from a political prisoner constitutes an inappropriate mechanism to control and to censure opposing political views, in contravention of the Covenant.

(a) The conversion practice is used to compel statements of remorse and ideological change from those who hold views critical of the ROK government. As such, the conversion practice violates articles 18 and 19 of the Covenant: the rights to freedom of thought, conscience and religion, and the right to hold opinions without interference.<sup>45</sup>

(b) Prisoners who were tried without due process and who continue to maintain their innocence, are particularly discriminated against by the conversion practice which withholds release until prisoners confess to having committed the crimes in question.

<sup>43</sup> See AsiaWatch Report, supra, page 2.

<sup>44</sup> The ROK ratified the Covenant in April, 1990.

<sup>45</sup> It should be noted that article 4 of the Covenant states there may be no derogation from the rights protected in article 18, except in limited circumstances. The ROK government has not complied with the requirements for derogation provided for in article 4.

Officials from the Ministry of Justice acknowledged that judgements and sentences of previous South Korean regimes may not have been correct and just, but they insisted that current trials and judgments are conducted impartially and independently.<sup>46</sup>

(c) The conversion practice invites abuse by encouraging coercion of prisoners into false confessions of guilt. Article 14(2) of the Covenant, which guarantees the right to be presumed innocent until proven guilty, may be repeatedly violated: once at the time of the initial trial, and each time the government pressures a political prisoner to make a conversion statement.

(d) Especially in the cases of long term political prisoners, the supporting judgments for their imprisonment arose from political and security circumstances which have undergone significant changes. It is indefensible to argue that South Korea's national security situation today necessitates the same draconian security measures applied thirty years ago.

#### (2). The ROK Constitution.

The government's conversion practice, as applied to prisoners of conscience, violates certain fundamental rights enshrined in the ROK Constitution. The practice goes beyond the standard evaluation of prisoners prior to their release or parole, because the conversion practice can involve a renunciation of the prisoner's beliefs which violates his freedom of conscience, religion, and thought, as well as his right to association, assembly and participation in the political process of democracy. In particular, the "conversion" practice, as described above, violates the following provisions of the ROK Constitution:

(a) Article 19 which guarantees every citizen's right to freedom of conscience;

(b) article 20 which protects South Koreans' freedom of religion; and

(c) article 21 which enshrines the rights to freedom of speech, assembly and association.

<sup>46</sup> The government's differentiation between past regimes and the current administration of President Roh is extraordinarily significant. If it is not only possible, but in fact probable, that the judiciary did not adhere to standards of due process in the past, then verdicts of guilt from those earlier courts cannot be used to keep political prisoners imprisoned. In fact, the prisoner's detention would violate articles 9 and 14 of the Covenant.



#### D. Conclusions.

The conversion practice as applied to political prisoners jailed for the nonviolent expression of their political beliefs, violates human rights as protected by international law and the ROK Constitution.

The South Korean government is urged to take steps to confirm its commitment to democracy and to human rights by adopting the following measures:

- (1) Terminate the "conversion" practice immediately;
- (2) release all political prisoners incarcerated for the nonviolent expression of their political beliefs; grant an amnesty or presidential pardon to all these political prisoners and to such prisoners who have refused to write conversion statements;
- (3) issue an order that all political prisoners, including those who have refused to write conversion statements, be afforded the same rights and privileges as those granted to other prisoners;
- (4) extend to all political prisoners the same visitation policies applicable other prisoners;
- (5) institute independent review boards with the power to review the cases of all political prisoners and to grant parole or amnesty to political prisoners;
- (6) grant prisoners the right to be represented by legal counsel of their choice in parole or amnesty hearings;
- (7) allow political prisoners to exercise their human rights, freedom of expression and freedom of conscience.

The ROK government is urged specifically to grant an early reprieve to, and to release Kim Keun Tae and other prisoners, who have been jailed for the nonviolent expression of their political beliefs, as prisoners of conscience. A list of the names of some of these political prisoners appears as an Appendix A to this report.

Although the ROK government released several hundred political prisoners during 1988 and has freed smaller numbers since, the government continues to incarcerate many political dissidents. Problems surrounding the release of political prisoners have not been resolved, despite the government's claims

to the contrary.<sup>47</sup>

The ROK government is called upon to produce specific, credible evidence establishing which of the 1300 prisoners (as counted by the Korean Bar Association), if any, do not qualify as "prisoners of conscience" because of their advocacy of violence.

The Roh government is also urged to reevaluate the cases of long term prisoners and to release, on humanitarian grounds, those long term political prisoners who are elderly and in poor health.

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<sup>47</sup> Identifying prisoners whose activities have been nonviolent is as difficult in the context of South Korea as it is throughout the world. The Human Rights Committee of the National Council of Churches in Korea and The Korean Bar Association contend there are now approximately 1300 political prisoners in South Korea. The U.S. Department of State says there are "hundreds" of political prisoners. Amnesty International reported on May 1, 1992, that there are 28 prisoners of conscience and that the cases of 62 political prisoners are being investigated as possible prisoners of conscience.

CHANG Ui-gyun  
Publisher  
Arrested 5 July, 1987  
Accused of espionage  
Sentence: 15 years imprisonment, reduced to 8 years

CHO Song-woo  
Staff member of Chonminnyon  
Arrested 30 November, 1990  
Accused of meeting an officer from North Korea in Berlin  
Sentence: 18 months

CHOI Ik-kyun  
Artist  
Arrested 18 March, 1991  
Accused of membership of an anti-state organization and praising  
North Korea  
Sentence: 18 months

CHONG Song-hee  
Artist  
Arrested 18 March, 1991  
Accused of membership of an anti-state organization and praising  
North Korea  
Sentence: 2 years

CHUNG Yoon-kwang  
Subway Co-Union leader  
Arrested 9 February, 1991  
Accused of third party intervention in labor dispute  
Sentence: Unknown

CHUNG Yoon-so  
Member of Chonminnyon  
Arrested 2 July, 1991  
Accused of sending delegates on an unauthorized trip to Berlin,  
attending a conference on reunification, and meeting with North  
Koreans  
Sentence: 18 months

Rev. HONG Keun-soo  
Pastor of Hyang Rin Presbyterian Church  
Arrested 20 February, 1991  
Accused of producing material benefiting North Korea and  
membership of an anti-state organization  
Sentence: 18 months



HONG Song-dam  
Artist  
Arrested 31 July, 1989  
Accused of sending a painting to and espionage for North Korea  
Sentence: 3 years

HONG Young-pyo  
Union leader  
Arrested 9 February, 1991  
Accused of third party intervention in labor dispute  
Sentence: 18 months

HWANG Tae-kwon  
M.A. student of Political Science, New School, New York, N.Y.,  
U.S.A.  
Arrested June, 1985  
Accused of espionage, pro-North Korean and subversive activities  
Sentence: 20 years

IM Su-kyong  
Student at Hankuk for Languages University  
Arrested 15 August, 1989  
Accused of visiting North Korea  
Sentence: 5 years

KIM Hi-taek  
Secretary general of Chonminnyon  
25 January, 1991  
Organizing an anti-state and pro-North Korea demonstration  
Sentence: 1 1/2 years

KIM Hyong-man  
Member of Chonminnyon  
Arrested 2 July, 1991  
Accused of sending delegates on an unauthorized trip to Berlin,  
attending a conference on reunification, and meeting with North  
Koreans  
Sentence: 7 years

KIM Keun-tae  
Human rights activist, leading member of the People's Alliance  
and Chonminnyon  
Arrested 14 May, 1990  
Accused of involvement in anti-government demonstrations  
Sentence: 2 years

KIM Song-man  
Graduate, physics, Yonsei University  
Arrested 5 June, 1985  
Accused of espionage, pro-North Korean and subversive activities  
Sentence: Life

KOH Chang-pyo  
Former ROK Army officer  
Arrested November 1983  
Accused of espionage  
Sentence: 15 years

KWON Hyong-taek  
Arrested 19 April, 1991  
Accused of formation of an anti-state group  
Sentence: 18 months

LEE Chang-bok  
Co-Chairman of Chonminnyon  
Arrested 25 January, 1991  
Accused of organizing an anti-state organization, pro-North Korea  
organizing and contacting North Korea  
Sentence: 2 years

LEE Eun-hu  
Union leader  
Arrested 9 February, 1991  
Accused of third party intervention in labor dispute  
Sentence: 18 months

LEE Hae-hak  
Staff member of Chonminnyon  
Arrested 30 November, 1990  
Accused of meeting a North Korean officer in Berlin  
Sentence: 18 months

LEE Pu-yong  
Teacher and acting President of Chonminnyon  
Arrested 14 June, 1991  
Accused of organizing an illegal demonstration  
Sentence: 1 year

Rev. MOON Ik-hwan  
Presbyterian Minister  
Arrested 6 June, 1991  
Accused of organizing anti-government protests and making anti-  
government speeches  
Sentence: Unknown

Father MOON Kyu-hyuo  
Catholic Priest  
Arrested 15 August, 1989 (with Im Su-kyong)  
Accused of visiting North Korea  
Sentence: 5 years

PANG Yang-kyun  
Opposition politician  
Arrested 2 July, 1989  
Accused of aiding Suh Kyung-won's visit  
Sentence: 7 years

PARK Deuk-jeun  
Worker in pharmaceutical industry, graduate from Yonsei University  
Arrested 22 March, 1991  
Accused of organizing anti-state demonstrations and helping to organize student visits to North Korea  
Sentence: 2 years

SUH Kyung-won  
Member of National Assembly, President of the Catholic Farmers Association  
Arrested 28 June, 1989  
Accused of illegally traveling to North Korea and meeting a North Korean official  
Sentence: 10 years

YU Won-ho  
Businessman  
Arrested 19 April, 1990  
Accused of illegally visiting North Korea  
Sentence: 7 years

## Annex

### Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

#### Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

#### *Principle 2*

#### Use of terms

For the purposes of the Body of Principles:

(a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;

(d) "Detention" means the condition of detained persons as defined above;

(e) "Imprisonment" means the condition of imprisoned persons as defined above;

(f) The words "a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

#### *Principle 3*

#### *Principle 4*

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

#### *Principle 5*

#### *Principle 1*

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.



2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

#### Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

#### Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

#### Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

#### Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

#### Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

#### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### Principle 12

1. There shall be duly recorded:  
(a) The reasons for the arrest;  
(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

\* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

#### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

#### Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

#### Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

#### Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the

competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### Principle 18

1. A detained or imprisoned person shall be entitled to com-



### Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefor shall be in accordance with relevant rules of domestic law.

### Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

### Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

### Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

### Principle 30

1. The types of conduct of the detained or imprisoned person that

constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

### Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

### Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

### Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

### Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

### Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules on liability provided by domestic law.

2. Information required to be

recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

### Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

### Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

### Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

### Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled,



unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

### General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.



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May 14, 1992

Kerry Kennedy Cuomo  
Executive Director

Dear Friend of Korea:

I am very pleased to enclose a copy of "Broken Promises, Unfulfilled Dreams: Human Rights and Democracy in South Korea". We hope that this report will be a valuable resource in understanding the status of human rights in South Korea.

In 1987, the RFK judges selected South Korean human rights activists, Kim Keun Tae and In Jae Keun, to receive the RFK Human Rights Award. Mr. Kim is also an Amnesty International Prisoner of Conscience. Since 1987, the RFK Center has taken a special interest in South Korea. This report follows a mission to South Korea which is discussed in the Preface to the Report.

While the government of President Roh Tae Woo proudly points to certain indices to suggest progress toward democratization, in reality it continues to control the people of South Korea through repressive measures.

The report examines the pivotal role which the security laws play in the systematic violation of the rights of South Korean citizens. Three mechanisms both exemplify and fortify that system of control: (1) The National Security Law ("NSL"), which most often serves to rationalize imprisonment of political dissidents; (2) the Social Observation Act ("SOA"), which authorizes an administrative procedure for surveillance and even imprisonment of political prisoners formerly incarcerated under security laws; and (3) the practice of "conversion" or "repentance," which makes the release of political prisoners contingent upon the prisoners' confession and renunciation of their political beliefs.

Examples of the abusive use of the NSL abound, most notably in the case of Kim Keun Tae. He has courageously and nonviolently campaigned for democracy and labor rights in South Korea. Mr. Kim has been repeatedly incarcerated and tortured. He was arrested again in May, 1990, more than two years after Pres. Roh took office promising democratic change. Mr. Kim was charged with violating the NSL after he denounced government policies and called for Korean unification and political change, at mass protest rallies.

The RFK Center urges the ROK government to comply with its stated commitments under its constitution and its obligations under international human rights laws. We appeal to the Roh government to release Kim Keun Tae and all other prisoners of conscience. We



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urge the ROK government to abolish the NSL, the SOA, the conversion practice, and to cease surveillance of former political prisoners and their families.

The RFK Center calls on all those who are concerned for the people of South Korea, for the democratic future of the Republic of Korea, and for early reunification on the Korean peninsula, to condemn the Roh government's reprehensible and unwarranted human rights violations, in the hope that all South Koreans may soon enjoy the free exercise of their human rights.

Our sincere wish is that the people of South Korea will continue striving towards a better tomorrow and to fulfilling their dreams of freedom and democracy.

Sincerely,

  
Kerry Kennedy Cuomo