

Republic of Korea (South Korea)

Open Letter to all Leaders of Political Parties: An Important Duty to Revitalise Efforts to Fundamentally Repeal or Review the National Security Law

As a leader of a major political party, representing newly elected members of the 17th National Assembly, I'm writing to you to urge your party to consider a repeal or review of the National Security Law (NSL) when it is discussed during this parliamentary session. Amnesty International believes that as current National Assembly members you have a very important duty to revitalize efforts to repeal or fundamentally review this draconian law and bring it into line with international standards. This would be a step forward in significantly improving human rights in South Korea.

Amnesty International has long campaigned to highlight the dangerous deficiencies in the NSL, in force since 1948. The NSL fails to meet international standards that require all criminal offences to be defined clearly so that people understand what conduct is prohibited. Amnesty International has also consistently documented how its poorly defined provisions are used in practice to imprison people engaged in non-violent political activity. For example, vaguely worded clauses such as Articles 3 and 7 provide for long sentences or the death penalty for "enemy-benefiting" (enemy refers to the Democratic People's Republic of Korea or North Korea), "anti-state" and "espionage" activities. These clauses have been used arbitrarily to indict people who have tried to exercise their basic rights to freedom of expression and association, in violation of the International Covenant on Civil and Political Rights (ICCPR) to which South Korea is a state party.

The NSL has also been frequently used as a form of censorship, to imprison people for publishing and distributing material deemed to "benefit" North Korea. Amnesty International strongly disagrees with the August 2004 ruling of the South Korean Constitutional Court that Article 7 does "not excessively restrict the conscience, ideology, knowledge, art, speech and press or infringe on its essential nature". Moreover, the UN Human Rights Committee, the expert committee established under the ICCPR to monitor state compliance with the convention in 1999 also concluded on the NSL "that the restrictions placed on freedom of expression do not meet the requirements of article 19, paragraph 3 of the Covenant, as they cannot be regarded as necessary to protect national security."

The NSL is currently applied in an arbitrary fashion - while certain left-wing political works are permitted for academic study, possession of, or reference to the same works by students or activists with perceived "pro-North Korean" leanings is often considered a criminal offence.

In a recent case, in April 2004, Amnesty International wrote to then Acting President Goh Kun raising our concerns regarding the detention and sentencing of Professor Song Du-yul under the NSL. Professor Song was indicted on 19 November 2003 for violating Articles 3, 5 and 8 of the NSL namely for "joining an anti-state organisation" and siding with an "enemy benefiting organisation". The prosecution stated there was clear evidence that Professor Song had written books praising North Korea - an act which is punishable under the NSL. Amnesty International is concerned that such restrictions on freedom of expression violate Article 19(2) of the ICCPR. The organization also pointed out the double standard operated by the authorities as Professor Song's work is reportedly publicly available all over South Korea. As he had acted on his beliefs in a non-violent way, Amnesty International recognised Professor Song as a prisoner of conscience and campaigned for his immediate release. Professor Song, who was sentenced for seven years by the Seoul District Court, was released in July 2004 by the Seoul High Court which absolved him of the main charges under the NSL and instead handed him a suspended sentence.

Until the late 1990's, the NSL had been used to justify the imprisonment of a small number of long-term prisoners for 30 to 40 years, making them some of the world's longest-serving political prisoners at that time. In 1999, the South Korean authorities released Woo Yong-gak and Hong Yong-gi, who had been in prison under the NSL for 41 years and 36 years respectively.

The organization has since witnessed positive developments as several amnesties have reduced the number of people imprisoned under the NSL. Most of those arrested under the NSL in recent years have been tried within six months of arrest and either released or given a short prison sentence, but some have been given heavy sentences. As of August 2004, at least 11 prisoners were reportedly being held under the NSL. Six of these are members of the national university students' party *Hanchongnyeon* which was branded as an 'enemy benefiting organization' by the South Korean authorities in 1997 and is therefore deemed illegal.⁽¹⁾ Amnesty International is concerned that the South Korean authorities can brand an organization as 'illegal' under the vaguely defined clauses of the NSL and then arrest and punish individuals simply for being members of the organization. Amnesty International has no position on the political ideology of *Hanchongnyeon* or any other political organisation but believes that criminalizing the expression of views, without demonstrating a direct and immediate connection between

the expression of these views and the likelihood or occurrence of violence, violates international human rights standards, including Article 19 of the ICCPR. Furthermore, the ill-defined and broad criminalisation of "enemy benefiting organisations" and the scope of activities that may be regarded as encouraging "anti-state organizations" under the NSL do not meet any of the other strict requirements for permissible restrictions under the ICCPR. In particular they are not necessary to protect national security and therefore are in violation of Articles 19 and 22 of the ICCPR. The UN Human Rights Committee also considers that the ICCPR does not permit restrictions on the expression of ideas merely because they coincide with those held by an enemy entity or may be considered to create sympathy for that entity.

Amnesty International acknowledges that every government has a right and duty to take measures to ensure the security of its citizens. We also appreciate that South Korea has special security concerns with regard to North Korea. However, security concerns should never be used as an excuse to deny people the right to express different political views and to exercise fundamental human rights including the right to freedom of expression as established in international standards including the ICCPR.

The current use of the NSL also appears to contradict the government's "Peace and Prosperity Policy" of engagement with North Korea. Under this policy the government encourages closer relations with North Korea through initiatives such as dialogue, trade and travel. Conversely, under the NSL people continue to be arrested for merely discussing reunification, publishing socialist or "pro-North Korean" material or having views considered similar to those of the North Korean government.

Amnesty International would like to bring to the attention of leaders of the political parties and the newly elected members to the 17th National Assembly recommendations consistently made by United Nations bodies on repealing or fundamentally reviewing the NSL to bring it in line with international standards.

· In July 1992 the UN Human Rights Committee made the following comment after examining South Korea's initial report under the ICCPR: ". . . *the Committee recommends that the State party intensify its efforts to bring its legislation more in line with the provisions of the Covenant. To that end, a serious attempt ought to be made to phase out the National Security Law which the Committee perceives as a major obstacle to the full realization of the rights enshrined in the Covenant and, in the meantime, not to derogate from certain basic rights*".

· In November 1995 the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, after a mission to South Korea, recommended that the South Korean government was "strongly encouraged to repeal the National Security Law and to consider other means, in accordance the Universal Declaration of Human Rights and the ICCPR, to protect its national security."

· The UN Human Rights Committee in October 1999 considered that "the scope of activities that may be regarded as encouraging 'anti-state organizations' under article 7 of the National Security Law is unreasonably wide."

In August 2004, the South Korean National Human Rights Commission stated that it would recommend abolition of the NSL to the Minister of Justice Kim Seong-kyu and the National Assembly speaker Kim One-ki. In September 2004, President Roh Moo-hyun stated that he supported the abolition of the NSL.

Amnesty International urges the leaders of the political parties and members of the 17th National Assembly to repeal or review fundamentally the National Security Law to bring it into line with international standards regarding clarity of criminal law, and the safeguarding of freedom of expression and association. Amnesty International believes that by doing so, the political parties and newly elected members of the National Assembly would be taking a highly significant step in ensuring human rights for all South Korean citizens. Amnesty International is writing to the leaders of all the political parties who are represented in the 17th National Assembly on this issue. I look forward to receiving your response to the concerns raised.

Yours sincerely,

Irene Khan,
Secretary General

(1) According to a High Court ruling reportedly issued every year since 1997, Hanchongnyeon "adopts violent revolutionary policies to commensurate with North Korea's policy of reunification by communizing

the South, thereby aiming to praise, encourage and publicize such activities and sympathize with such acts, and is therefore an organization benefiting the enemy as defined in Article 7 of the NSL". The Supreme Court rejected an appeal by Hanchongnyeon against the High Court ruling in 1997. Recognizing the fact that the organization elects new representatives every year, the Supreme Court added that the "enemy benefiting" definition had to be reviewed each year. Since then prosecutors have reportedly asked the courts to continue to define Hanchongnyeon as "enemy benefiting" even though the party has replaced its agenda that was cited as the justification for the label and now supports the 15 June 2000 Inter-Korean Declaration issued by then South Korean President Kim Dae-jung and North Korean leader Kim Jong-il