



REPUBLIC OF KOREA

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 14TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2012

FOLLOW UP TO THE PREVIOUS REVIEW

During its previous Universal Periodic Review in 2008, recommendations were made to the Republic of Korea (South Korea) on ratifying key international treaties,¹ reviewing or abolishing the National Security Law,² abolishing the death penalty,³ recognizing the right to conscientious objection⁴ and protecting the rights of migrant workers.⁵

Numerous recommendations were made to South Korea to abolish or reform the National Security Law. Despite assurances from the authorities that this law is not misused, investigations, arrests and prosecutions of individuals and organizations under its vaguely worded clauses have increased significantly over the past four years (see below).

South Korea has not made any progress toward abolishing the death penalty (see below).

Plans to introduce alternative service for conscientious objectors have been on hold indefinitely since December 2008 (see below).

South Korea accepted several recommendations on protecting the rights of migrant workers,⁶ however, men and women migrant workers, including women migrant workers, continue to be at risk of a range of human rights abuses, including discrimination, and verbal and physical abuse. Women migrant workers remain at particular risk of exploitation (see below).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

NATIONAL SECURITY LAW

There has been an increase in the use of vaguely worded clauses of the National Security Law to suppress dissent and arbitrarily prosecute individuals for peacefully exercising their rights to freedom of expression and association. The National Security Law uses vague, broad language to define "criminal acts". For example, in the past three years numerous arrests have been made under Article 7 of the National Security Law under which an individual found guilty of praising, inciting or propagating the activities of an "anti-government organization" could face up to seven years in prison.⁷ The criteria to define "praise," "incite" or "propagate" are open to interpretation.⁸

The authorities increasingly use the National Security Law to target individuals and organizations perceived to oppose the government's policy on North Korea. According to the Supreme Prosecutors' Office, the number of new investigations initiated under the National Security Law doubled from 46 in 2008 to 90 in 2011. According to a news report in January 2012 citing National Police Agency's statistics, the number of people investigated for pro-North Korean on-line activities increased from 5 in 2008 to 82 in 2010 while the number of domestic websites shut down for pro-North Korean content rose from 2 in 2008 to 178 in 2010. Such cases are not always straightforward and can take years to resolve. During this time, organizations may be forced to close or individuals may be silenced, regardless of the actual outcome of an investigation, trial or appeal.

As a result the National Security Law is increasingly used as a form of censorship to intimidate and imprison people for publishing and distributing material deemed to “benefit” North Korea. Park Jeong-geun, a member of the Socialist Party in South Korea, was charged by the authorities in January 2012 with violating the National Security Law after re-tweeting the message “long live Kim Jong-il” from North Korea’s official twitter account. If convicted, Park could face up to seven years in prison. The Socialist Party has frequently criticized North Korea for exploiting its labour force, outlawing trade unions and forcing people to work in appalling conditions. Park has told Amnesty International that his intention was to lampoon North Korea.

NATIONAL HUMAN RIGHTS COMMISSION OF KOREA

In 2010, the National Human Rights Commission of Korea was downsized by 21 per cent, which led to a significant reduction in the capacity and effectiveness of the organization and undermined its independence and credibility. Independence from the government, which is ensured in part by the provision of adequate funding, is one of the key Principles relating to the status of National Institutions (the Paris Principles) which are the minimum standards that a national human rights institution must meet if it is to be considered legitimate. Amnesty International is also concerned that Commissioners were appointed despite concerns over their lack of human rights experience and without broad consultation with civil society groups and other relevant stakeholders. The process of appointments is not sufficiently transparent to ensure the independence of those appointed. In 2011, local human rights NGOs boycotted consultations on a new National Action Plan over concerns that the consultation process was not genuine.

THE HUMAN RIGHTS SITUATION ON THE GROUND

FREEDOM OF ASSEMBLY AND ASSOCIATION

The authorities clamp down on dissenting voices, including those of NGO activists, journalists, bloggers and peaceful protesters. During demonstrations in 2008 against the resumption of US beef imports, at least 1,258 civilians were prosecuted for illegal protest, mostly under the Assembly and Demonstration Act. During the largely peaceful protests police beat protesters with shields and batons, fired water cannons at close range and denied medical care to protesters in detention. Protesters suffered injuries such as broken bones, concussion, temporary blindness and punctured eardrums. However, no police were prosecuted for using unnecessary or excessive force during the protests despite evidence that some officers had clearly done so.

Following his visit to South Korea in 2010, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression raised concerns that “the full respect for human rights, and in particular the right to freedom of opinion and expression, has been diminishing [since 2008]”.⁹

There are ongoing protests against the construction of a naval base in Gangjeong village, Jeju Island, and many residents and activists face civil and criminal charges. In August 2011, the Public Prosecutors’ Office labelled the protests a “challenge to state power”. According to the South Korean NGO, *People’s Solidarity for Participatory Democracy*, as of February 2012, 329 arrests had been made under various charges, including violating Article 185 of the Criminal Code, “interference/obstruction of traffic”, and Article 314, “interference with business”.

THE DEATH PENALTY

In February 2010, in a five to four ruling, the Constitutional Court stated that capital punishment does not violate “human dignity and worth” as protected in the Constitution. Two of the five judges who upheld the constitutionality of the death penalty nonetheless stated that legislation to abolish or amend the death penalty would be desirable.

The last executions in South Korea took place in December 1997. However, at the end of 2011 at least 60 people were on death row and death sentences continue to be handed down in South Korea. The death penalty remains applicable for a wide range of criminal and political offences under approximately 20 different laws. In recent years, most death sentences have been imposed for convictions of multiple murders.

There is no official moratorium on executions and legislative moves to abolish the death penalty have come to nothing. The most recent draft legislation aimed at abolishing the death penalty was submitted to Parliament in 2010; however, it stalled in the Legislation and Judiciary Committee and failed to go to a vote in the plenary. The draft legislation will lapse in May 2012. Amnesty International believes that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Despite provisions for the right to freedom of conscience in the Constitution, and obligations under international law which guarantee this right,¹⁰ the government continues to imprison individuals who raise a conscientious objection to military service.¹¹ Around 800 conscientious objectors are currently imprisoned in South Korea.

The vast majority of conscientious objectors in South Korea are Jehovah's Witnesses; however, there are also others who object due to their religious beliefs or have other moral, ethical, humanitarian or similar reasons for refusing to carry out military service. For example, Moon was sentenced to 18 months imprisonment in March 2011. Before his imprisonment Moon travelled around the world as a peace activist participating in training and seminars. Baek, a lawyer who is currently appealing against his conviction for refusing military service, will be barred from practicing law for five years if imprisoned as a conscientious objector. There is no provision in national law for conscientious objectors to military service to carry out alternative civilian service.

In November 2010, the Constitutional Court convened a hearing on whether criminal punishment for conscientious objectors to military service constitutes a violation of rights protected in the Constitution. The Court also considered whether failure to provide alternative service options for conscientious objectors violates their right to freedom of conscience. In 2011, however, the Court ruled that the right to conscientious objection to military service is not protected in the Constitution. Amnesty International believes that the weight of international standards and guidance from jurisprudence of the UN Human Rights Committee support the protection of conscientious objection to military service under the right to freedom of thought, conscience and religion, as enshrined in Article 18 of the International Covenant on Civil and Political Rights.

MIGRANT WORKERS

The 2009 Amnesty International report, *Disposable Labour: Rights of Migrant Workers in South Korea*, documents a range of human rights abuses against migrant workers, showing that migrant workers in South Korea face greater risks than South Korean counterparts because of their migrant status. Both regular and irregular migrant workers face discrimination and verbal and physical abuse in the workplace. They are required to work long hours and night shifts, many without overtime pay, and often have their wages withheld. On average, they are paid less than South Korean workers in similar jobs. Workers hired under the Employment Permit System are tied to their employer and face restrictions in changing jobs, making them particularly vulnerable to abuse and exploitation, including unfair dismissal.

Women migrant workers are particularly at risk of exploitation. Many are sexually assaulted or harassed by their managers or co-workers. Several female workers on E-6 visas (visas for engaging in work in the entertainment industry under the entertainment work scheme), recruited as singers in the US military camp towns, have in fact been trafficked by their employers and managers and live in slavery-like conditions. Upon arrival in South Korea, they discover that their job in reality is to serve and solicit drinks from US soldiers. At some establishments they are forced to have sex with their clients. Women who flee such circumstances are doubly victimized, first as trafficked women and then as "illegal" migrants under South Korean law.

Amnesty International has consistently raised the case of Michel Caturia, the President of the Seoul-Gyeonggi-Incheon Migrants' Trade Union (hereafter the Migrants' Trade Union). In late 2010, the Korean Immigration Services began investigating Michel Caturia on suspicion of violating the Immigration Control Act in the course of applying for a workplace transfer.¹² Amnesty International believes that action taken against Caturia is an attempt by the South Korean authorities to crack down on the activities of the Migrants' Trade Union and to threaten migrant workers' rights to freedom of association and to form and join trade unions. Since the founding of the Migrants' Trade Union in 2005, the Korean Immigration Services have arrested six of its senior officials, five of whom were forcibly and arbitrarily deported. The Ministry of Employment and Labour denies the legal status of the Migrants' Trade Union despite a 2007 Seoul High

Court ruling in favour of the right of migrant workers, including undocumented migrant workers, to form and join trade unions.

In September 2011, the Constitutional Court ruled that restrictions on labour mobility for migrant workers do not violate the right to freedom of occupation or the right to work under the Constitution. Migrant workers in South Korea are restricted to three changes of workplace within a work permit issued under the Employment Permit System. Amnesty International believes that this and other restrictions on labour mobility within the Employment Permit System increase migrant worker's dependency on employers and their vulnerability to exploitation and abuse.

Additionally, Amnesty International is concerned at the human rights violations committed in the context of a crackdown on undocumented migrant workers. The Korean Immigrations Service, sometimes accompanied by the police, has conducted mass crackdowns on workplaces, on the streets, in markets, train stations, and private homes of migrant workers. Amnesty International has documented instances of arbitrary arrest, collective expulsions and violations of law enforcement procedures, including excessive use of force during raids. In November 2011, a Chinese migrant worker died in a police vehicle immediately after his arrest by immigration authorities. Despite frantic calls for help from fellow detainees, officials were slow to react and medical help arrived too late.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of South Korea:

National human rights legislation:

- To sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

National Security Law:

- To abolish the National Security Law or to bring it into line with international human rights standards so that it cannot be used to suppress dissent or prosecute individuals for peacefully exercising their rights to freedom of expression and association;
- To immediately release all individuals imprisoned for peacefully exercising their right to freedom of opinion and expression.

National Human Rights Institution:

- To ensure that the National Human Rights Commission of Korea is adequately staffed and financed so that it is empowered to act as an independent, effective and credible national human rights institution;
- To ensure that members of the National Human Rights Commission are appointed through a transparent process and in consultation with civil society groups and other relevant stakeholders, and that those appointed have relevant human rights-based knowledge and experience.

Freedom of assembly and association:

- To ensure that clear guidance and strict training is given to police officials on the appropriate use of police and security equipment and weaponry in accordance with international human rights law and standards;
- To ensure that allegations of unnecessary or excessive use of force by police during protests are investigated, and that individuals responsible for such acts are prosecuted;

- To end the persecution of individuals, including journalists and trade unionists, who call for guarantees of media independence;
- To drop civil and criminal charges against those involved in peaceful protests against the construction of a naval base in Gangjeong village, Jeju Island.

The death penalty:

- To establish an official moratorium on executions with a view to abolishing the death penalty;
- To take all necessary steps to secure abolition of the death penalty in national legislation.

Conscientious objection to military service:

- To grant an immediate and unconditional amnesty to all conscientious objectors currently in prison in South Korea;
- To bring national legislation into line with international standards by introducing provisions for conscientious objection to military service, including ensuring that alternative service is of a genuinely civilian character, non-punitive and under civilian control and of a length comparable to that of military service.

Migrant workers' rights:

- Eliminate the restrictions on labour mobility of migrant workers, a major reason for their exploitation by their employers, including by amending Article 25 of the EPS Act which restricts the number of times migrant workers can change jobs;
- Take particular measures to respect, protect and promote the rights of all women migrant workers and to ensure that they are not subjected to human rights abuses at their places of work, such as unlawful restrictions on their freedom of movement, verbal and physical abuse and sexual and other forms of gender-based violence;
- Immediately remove obstacles to migrant workers forming and participating in trade unions. In particular, immediately remove obstacles to migrant workers joining the Migrants Trade Union, in particular by recognising the status of the Migrants Trade Union as a legal union in South Korea;
- Ensure that the procedures for the arrest, detention and deportation of irregular migrant workers are in line with international human rights law and standards;
- Conduct prompt, effective, independent, thorough, and impartial investigations into allegations of human rights violations by immigration officials and hold perpetrators accountable for human rights violations.

¹ Report of the Working Group on the Universal Periodic Review of the Republic of Korea, 29 May 2008 (A/HRC/8/40) recommendations 64.16 (France), 64.26 (UK) and 64.7 (Algeria, Philippines, Egypt, Mexico, Peru).

² A/HRC/8/40, recommendations 64.4 (Democratic Peoples' Republic of Korea), 64.24 (United Kingdom) and 64.33 (United States of America).

³ A/HRC/8/40, recommendation 64.20 (Belgium, Italy, Mexico, Netherlands, United Kingdom of Great Britain and Northern Ireland).

⁴ A/HRC/8/40, recommendation 64.17 (Slovenia).

⁵ A/HRC/8/40, recommendations 64.3 (Indonesia), 64.8 (Algeria), 64.11 (Canada), 64.15 (Canada), 64.30 (Romania) and 64.32 (Mexico).

⁶ A/HRC/8/40, recommendations 64.3 (Indonesia), 64.8 (Algeria), 64.11 (Canada), 64.15 (Canada), 64.30 (Romania) and 64.32 (Mexico).

⁷ Article 7 of the National Security law reads as follows:

- (1) Any person who praises, incites or propagates the activities of an anti-government organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years. (Amended by Act No. 4373, 31 May 1991)
- (2) Deleted by Amendment Act No. 4373, 31 May 1991.
- (3) Any person who constitutes or joins an organization aiming at the acts as referred to in paragraph (1) shall be punished by imprisonment of one or more years. (Amended by Act No. 4373, 31 May 1991).
- (4) Any person who is a member of the organization as referred to in paragraph (3), and fabricates or circulates any false fact as to the matters which threaten to provoke any confusion of social order, shall be punished by imprisonment for two or more years (Amendment by Act No. 4373, 31 May 1991).

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- (5) Any person who manufactures, imports, reproduces, holds, carries, distributes, sells or acquires any documents, drawings or other expression materials, with the intention of committing the acts as referred to in paragraph (1), (3), or (4), shall be punished by the penalty as referred to in the respective paragraph (Amendment by Act No. 4373, 31 May 1991).
- (6) Any person who has attempted the crime as referred to in paragraph (1) or (3) through (5), shall be punished. (Amendment by Act No. 4373, 31 May 1991).
- (7) Any person who prepares for or plots the crime as referred to in paragraph (3) with the intention of committing it shall be punished by imprisonment for not more than five years. (Amendment by Act No. 4373, 31 May 1991).

⁸ Following his 2010 visit to South Korea, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted that the restrictions placed on freedom of expression as provided in Article 7 of the NSL do not meet the requirements for freedom of expression as set out in Article 19 paragraph 3 of the International Covenant on Civil and Political Rights. The Special Rapporteur recommended that Article 7 of the NSL be abolished. Other vaguely worded articles in the NSL including Article 2 need to be abolished or amended to meet international standards.

⁹ "UN expert: space for freedom of expression diminishing in the Republic of Korea", 17 May 2010, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10047&LangID=E> (accessed 23 April 2012). See also: report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 21 March 2011, UN Doc: A/HRC/17/27/Add.2.

¹⁰ In March 2011, in the course of considering the cases of 100 South Korean conscientious objectors submitted to the UN Human Rights Committee, the Committee found that the South Korean government had violated Article 18 of the International Covenant on Civil and Political Rights by imprisoning individuals who refused on conscientious grounds to undertake military service. The Committee noted that the South Korean government has an obligation to provide an effective remedy for violation of the rights of conscientious objectors, including compensation, and to avoid similar violations in the future.

¹¹ In South Korea, men who refuse to undergo compulsory military service are tried in civil courts for violation of the Military Services Act, under which all males ages 18-35 must serve an average of 24 months active military service followed by subsequent duties in the Reserved Forces for the following eight years. Most conscientious objectors in South Korea serve a minimum 18 months in prison. They leave prison with a criminal record and are consequently discriminated against when seeking employment.

¹² In February 2011, the Korean Immigration Services cancelled Cautira's visa and ordered him to leave South Korea. Cautira appealed the decision to the Seoul Administrative Court which ruled that the Korean Immigration Services' efforts to deport him were in violation of South Korean and international human rights law. The Korean Immigration Services have appealed this decision, which is now pending in the Seoul High Court.