

# **REPUBLIC OF KOREA (South Korea)**

## **Terrorism Prevention Bill: granting greater scope for increased human rights violations**

The National Intelligence Service, a secretive agency about which Amnesty International has expressed concern because of its responsibility for some of the most serious human rights violations, announced on 12 November 2001 that the South Korean government was set to enact the Terrorism Prevention Bill shortly.

The Bill is expected to be discussed and put to vote in the National Assembly in April 2002. The proposed Act has raised serious concern in the human rights community in South Korea and worldwide. It contains provisions which directly contravene international human rights treaties to which South Korea is a party. At the same time, many of its provisions appear to be clearly open to abuse by law enforcement officials but the proposed Act fails to provide adequate safeguards against such abuse.

A further concern is that the promulgation of the bill will extend the use of the death penalty which Amnesty International opposes unconditionally in all circumstances. Its provisions could also deny asylum seekers from being granted a fair and satisfactory procedure to their appeals. The Bill also has provisions that could effectively empower the National Intelligence Service, an agency which has a record for abuse of human rights.

Most worryingly, the bill appears to have been formulated by the South Korean government without taking into account recommendations of the NHRC that specifically stated that the preconditions claimed by the government did not exist. The government also appears to be ignoring the serious concern of the human rights community in South Korea, many of whom see the Bill as yet another version of the vaguely-worded National Security Law. Under the National Security Law, students, political activists, publishers, trade unionists have been arrested; most were arrested and brought to trial for non-violent offences under Article 7 of the law on vaguely-defined charges of 'praising' and 'benefiting' North Korea. Article 7 provides for up to seven years' imprisonment, while other provisions provide for longer sentences and the death penalty for ill-defined "anti-state" and "espionage" crimes.

Finally, the provisions of the Bill appear to facilitate torture and ill-treatment, unfair trials and the denial of the right to freedom of expression and association.

### **The Terrorism Prevention Bill implies extension of use of the death penalty**

The vaguely worded clauses of the proposed Terrorism Prevention Act extends the use of the death penalty. Article 19 of the proposed Act creates a new offence, that of being the leader

of a “terrorist” organization and makes the offence punishable with death or life imprisonment. This extension of capital punishment represents a reversal of measures taken by the South Korean government toward abolition of the death penalty. For instance, there has been an unofficial moratorium on executions since 1998 when President Kim Dae-jung assumed office. The move is also likely to undermine efforts towards a proposed legislation calling for the abolition of the death penalty which is supported by 155 members of the 273 member National Assembly and is currently being considered by the Standing Committee for Judiciary and Legislation in the National Assembly.

The proposed extension of the death penalty goes not only against the opinion of a majority of members of the National Assembly, but also against international human rights standards. For instance, the UN Commission on Human Rights calls on all states which maintain the death penalty “progressively to restrict the number of offences for which the death penalty may be imposed; to establish a moratorium on executions, with a view to completely abolishing the death penalty.”<sup>1</sup> Other international human rights standards, such as Article 6(6) of the International Covenant on Civil and Political Rights (ICCPR), of which South Korea is a state party, have also encouraged the abolition of the death penalty. Amnesty International opposes the death penalty in all cases as it violates the right to life and is the ultimate form of cruel, inhuman or degrading punishment.

### **The Terrorism Prevention Bill implies risk of *refoulement***

The Terrorism Prevention Bill appears to deny the right of non-citizens who are suspected of being “terrorists” to apply for asylum. Article 11 of the Bill gives authority to civil servants of a proposed Anti-Terrorist Centre, police officers in charge of anti “terrorism” activities, the head of the proposed Anti Terrorism Centre or the Commissioner General of National Police Agency to request the deportation of foreign nationals without having their claims for asylum assessed by fair and satisfactory procedures. The Bill fails to protect effectively the right of non-citizens to seek asylum and permits allowing their deportation from South Korea before any assessment of their asylum claims, purely on the basis of suspicions that they are involved in “terrorism”. This can increase the risk of *refoulement* - a breach of the obligation under the Refugee Convention and UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) not to return anyone to a

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<sup>1</sup> Commission on Human Rights resolution 2001/68, [The question of the death penalty](#) adopted on 25 April 2001 “Calls upon all States that still maintain the death penalty:

- (a) Progressively to restrict the number of offences for which the death penalty may be imposed;
- (b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;
- (c) To make available to the public information with regard to the imposition of the death penalty”

country where they may suffer serious human rights abuses such as torture or the death penalty. South Korea is a state party to both the Refugee Convention and Convention against Torture. **The Terrorism Prevention Bill provides greater powers to the National Intelligence Service (NIS), making it less accountable for its conduct**

Within the provisions of the Terrorism Prevention Bill, the NIS would be playing a leading role in the implementation of the Bill. Article 5 of the Bill provides for the creation of an “Anti Terrorism Centre” under the NIS to implement the Bill. Human rights defenders in South Korea believe that this centre will most likely be set up as part of the NIS giving the agency widened scope for greater human rights violations.

The NIS, which until January 1999, was known as the Agency for National Security Planning, is known to have a record of abuse of power, torture, and corruption which has been highlighted by Amnesty International in the past.<sup>2</sup> The NIS has already committed a pattern of human rights violations under the National Security Law which has been in force since December 1948. In its report Republic of Korea (South Korea): Summary of concerns for 1999 (AI Index: ASA 25/01/99), Amnesty International had called on the South Korean government “to curb abuses by the intelligence agency.” The organization had justified this call by stating that this intelligence agency “has been responsible for some of the most serious human rights violations in South Korea, including torture of political suspects.”

### **The Terrorism Prevention Bill is another version of the National Security Law**

The vagueness of the articles and definitions of the Terrorism Prevention Bill resembles those of the National Security Law . This law has on occasions facilitated serious abuse of human rights, as documented extensively by Amnesty International. Under the National Security Law, trade unionists, students, publishers and political activists are still being imprisoned; most are arrested and brought to trial for non-violent offences under vaguely-defined charges of ‘praising’ and ‘benefiting’ North Korea (Article 7), or under other provisions that provide for longer

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<sup>2</sup> In its report Republic of Korea: Amnesty International calls for prisoner releases and a halt to National Security Law arrests (AI Index: ASA 25/022/1998), Amnesty International called for the release of at least 15 long-term political prisoners who were convicted unfairly and on politically motivated charges during the 1970s and 1980s, most of whom were sentenced to life imprisonment under the National Security Law on charges of spying for North Korea. The organization stated that “(t)heir cases follow a consistent pattern of illegal arrest, incommunicado detention, torture and coerced confessions, mostly carried out by the Agency for National Security Planning (ANSP, recently renamed as the National Intelligence Service)”. Hwang Tae-kwon, a former prisoner of conscience had stated in a letter that “(a)fter 60 days of torture and beatings in the basement of the Agency for National Security Planning and after three years of imprisonment for a crime I did not commit, having been silenced all these years, I hope my story will expose the crimes that were committed against me by the powers-that-be in order to extract my "confession". (Quoted from Republic of Korea:Hidden victims: the long-term political prisoners (AI Index: ASA 25/023/1997)).

sentences and for the application of the death penalty for ill-defined “anti-state” and “espionage” crimes. Amnesty International has campaigned for the National Security Law to be either amended in accordance with international human rights standards, or abolished. As of February 2002, at least 35 political prisoners were charged under the NSL, many have been arrested for non-violent offences. In Amnesty International’s view, there are grave concerns that the proposed Terrorism Prevention Bill provides an expanded scope for human rights violations.

### **Lack of public debate over the Terrorism Prevention Bill**

The South Korean government appears to have avoided public debate or negative feedback in the drafting of the proposed Terrorism Prevention Act. South Korean authorities appear to be ignoring the conclusions of the National Human Rights Commission (NHRC) which stated that the preconditions claimed by the government justifying the creation of the proposed Act does not exist. The NHRC further stated in its comments on the proposed Act that there was no clear evidence that clear danger was present, that there was not enough evidence that the proposed Act would address the danger of terrorism. Furthermore, the NHRC had in its report stressed that there already exist sufficient legislation to safeguard national security needs. For instance, the special law titled “2002 World Cup Football Games Support Act” stipulates anti-terrorism measures for the Games and empowers the NIS to coordinate such measures. Experts emphasize the existence of additional legislation like the National Security Law and “the Law on Unified Defence” to safeguard national security interests.

In addition, some 90 non-governmental organizations (NGOs) in South Korea have expressed their objection to the proposed Act. However the government appears to be ignoring their concerns and seem determined to go ahead with the enactment, ignoring the need for consultation with civil society.

### **Conclusion**

Amnesty International acknowledges that the South Korean government has a right and duty to protect the rights and safety of people within its territory. However, any legislation or action taken must be in full conformity with international human rights standards.

Amnesty International is very concerned that the proposed Terrorism Prevention Act - with its provisions calling for death penalty, with its implementation by an “Anti Terrorism Centre” controlled by the NIS, and the provisions which appear to deny non-citizens who are suspected of being terrorists the right to apply for asylum - is incompatible with international human rights treaties, particularly the ICCPR, the Convention against Torture and the 1951

Refugee Convention.<sup>3</sup> It must be noted that South Korea has acceded to both the ICCPR, Convention against Torture and the Refugee Convention. The organization is alarmed that the proposed legislation does not provide sufficient safeguards in order to prevent human rights violations.

### **Amnesty International's Recommendations**

- (1) The South Korean government should ensure that Terrorism Prevention Bill and other national security measures are in full conformity with international human rights standards.
- (2) The Terrorism Prevention Bill should not extend the application of the death penalty.
- (3) The South Korean government should ensure that national security legislation, including the Terrorism Prevention Bill, does not undermine the right of non-citizens to seek asylum. At all times the South Korean government should ensure that asylum seekers are not deported without having their claims of protection assessed by fair and satisfactory procedures.
- (4) The Terrorism Prevention Bill contains provisions that could put the National Intelligence Service in charge of implementing its clauses. The National Intelligence Service has a record of abuse and torture which has been highlighted by Amnesty International in the past. The South Korean government should avoid enactment of any legislation that would effectively empower an organization such as the National Intelligence Service in such a way that could increase the possibility of human rights violations.
- (5) The South Korean government should take note of the conclusions of the NHRC which stated that the preconditions claimed by the government justifying the creation of the Terrorism Prevention Bill do not exist. The NHRC has also stressed to the government that there already exists sufficient legislation such as the special law, "2002 World Cup Football Games Support Act" which stipulates anti-terrorism measures for the games and already empowers the National Intelligence Service to coordinate such measures. The government should also note that some 90 NGOs have expressed their concern against this bill. By avoiding a public debate on the bill and by ignoring the NHRC's recommendations, the South Korean government is reducing, instead of increasing, the transparency of the legal system necessary to ensure the effective protection of human rights.

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<sup>3</sup> South Korea is a state party to the ICCPR since April 1990; to Convention against Torture since January 1995 and the 1951 Refugee Convention since December 1992.

- (6) Amnesty International is also urging the Government of South Korea to either amend the National Security Law in accordance with international human rights standards or abolish it.

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FEAR OF REFOULEMENT