

Assessing Reform in South Korea:

A Supplement to the Asia Watch Report on Legal Process and Human Rights

October 1988

**Asia Watch
739 Eighth St., SE
Washington, DC 20003**

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PREFACE

This Asia Watch update on human rights and legal process in the Republic of Korea ("South Korea") is based on information gathered by Asia Watch throughout the past year, including information obtained during a mission to the Republic of Korea in July and August 1988 by Julie Brill. Ms. Brill is a member of the Asia Watch Board of Directors and is an Assistant Attorney General of the state of Vermont. In South Korea, Ms. Brill interviewed officials of the Ministry of Justice, officers of the Korean Bar Association, the U.S. Ambassador to South Korea, human rights activists, clergymen, recently released political prisoners, family members of remaining political prisoners, and members of opposition political parties.

This report is intended to serve as a supplement to an Asia Watch report on human rights and legal process first released in February 1987. The current report was written by Julie Brill and edited by Eric Schwartz, Washington Director of Asia Watch, with the assistance of Asia Watch Associate Ji Won Park.

*A Stern. Steady Crackdown: Legal Process and Human Rights in South Korea, (New York and Washington, DC), 1987.

SUMMARY AND RECOMMENDATIONS

A. Summary

Although the Government of the Republic of Korea has recently implemented reforms that augur well for improved observance of internationally recognized human rights, many restrictive practices continue. Asia Watch's findings, based primarily on a mission to South Korea in July 1988, indicate that:

(POLITICAL IMPRISONMENT)

—Despite the welcome releases of several hundred political prisoners since June 1987 and the lifting of restrictions on civil rights of ex-prisoners, several hundred political prisoners remain. The Government's standards for release of political prisoners are ambiguous and permit continued imprisonment of peaceful political activists; and many such prisoners appear to remain in custody;

—A number of remaining political prisoners were convicted pursuant to prosecutions that were accompanied by serious procedural abuses, including use of torture to obtain confessions; such abuses render these convictions highly suspect;

—Recent reports reveal that some fifty men, most over the age of 60, are being held without trial in "preventive custody" in Chongju Protective Custody Prison. (South Korean law empowers the Government to detain prisoners without trial after their prison terms expire, as a form of preventive custody.) Most of their original sentences were from 10 to 15 years, and most appear to have been held in preventive custody for 10 years or more after their sentences had expired. Reports suggest that most of these men were first arrested during or after the Korean War on suspicion of being North Korean agents, or for allegedly joining the armed resistance against the Government of Syngman Rhee in 1948-1950 or for having been drafted as laborers by the North Korean army during the Korean War;

—Reports of arrests since February 1988 indicate that the government has not ceased its practice of imprisoning persons for peaceful dissent. For example, Reverend Shin Chul-ho of the Pekma Methodist Church in Pupyong was detained from late August through late September, apparently in connection with the showing of a slide presentation on the Democratic People's Republic of Korea;

(PROCEDURAL ABUSES)

--Although reports of torture and mistreatment have diminished since early 1987, continued problems in this area remain. Several recent cases of mistreatment, including beatings and water torture have been reported in 1988 and involve both political and common criminal suspects. We note that in at least two cases (involving three victims), several policemen allegedly involved in the torture were arrested, although we do not know the outcome of these cases;

--Reports of mistreatment of students and laborers at demonstrations and strikes have also continued. In the case of laborers, we are concerned by reports that the government has not taken

strong action against management use of company agents or employees to quell strikes. In many cases, these persons reportedly use extreme violence to dissuade workers from engaging in collective action;

—Although a greater number of public demonstrations have been permitted by the authorities over the past sixteen months, official actions have been inconsistent, and demonstrators (including workers engaged in strikes) continue to be subjected to arbitrary arrest and detention. In addition, students and other young persons continue to be subjected to "pick-ups," in which authorities detain them for short periods. For example, students who are found to possess political pamphlets or discussion papers have been subjected to this treatment;

(REFORM OF THE LEGAL SYSTEM)

—A number of Constitutional amendments enacted in late 1987 improve the prospects for respect of internationally recognized human rights in South Korea. These include strengthened procedures for judicial review of the constitutionality of laws, increased powers of judges to review the legality of detentions, and a requirement that arresting authorities inform detainees of their right to the assistance of counsel;

—All of the major political parties in South Korea have expressed support in recent months for reform of legislation that has traditionally been used to imprison political activists, such as the National Security Law and the Law on Assembly and Demonstration, among others. There were also calls by the Government-established Democratization and Reconciliation Council and others for reform of the Agency for National Security Planning (ANSP) and the Military Security Command. These two organs have been involved in interrogation of political opponents, and have been responsible for some of the most severe torture in South Korea. In July, the ruling Democratic Justice Party reportedly indicated that it intends to revise the law to limit the activities of the ANSP;

—The new Constitution lays a foundation for greater judicial independence by providing for increased oversight of judicial appointments by the National Assembly. Under the new provisions, the National Assembly now may withhold its consent to the President's choice of all Justices to the Supreme Court (the prior Constitution required such consent only in the appointment of the Chief Justice). The National Assembly has already indicated that it takes seriously its role by rejecting President Roh's first nominee for Chief Justice in June 1988. Roh's second choice, made after consultation with all parties, was accepted by a near-unanimous vote;

—There are some indications that over the past year judges have begun to take advantage of the new political climate to protect the rights of persons in political cases. For example, appellate courts have recently dismissed two long-standing cases against political opponents of the government. However, these examples of judicial independence are noteworthy because they are still rather unusual. For example, the judiciary has appeared to exhibit reluctance to mete out very stern punishments to policemen and their superiors in the trials of those charged in connection with the death by torture in January 1987 of student Park Chong-chol. Four defendants in the case, including the former Director of the National Police Headquarters, received suspended sentences earlier this year.

B. Recommendations

Asia Watch believes that the Government of the Republic of Korea can take a number of actions to strengthen its commitment to respect for human rights. In particular, we urge the Government:

—to announce and implement policies that will ensure the immediate and unconditional release of all persons imprisoned for the peaceful expression of their beliefs, and that will end the official practice of imprisoning peaceful opponents;

—to order independent reviews of all convictions in which there have been credible reports of serious procedural abuses, such as the use of torture to obtain confessions;

—to release immediately and without conditions the fifty men believed to be held in preventive custody in Chongju Protective Custody Prison, as all are imprisoned beyond the fulfillment of their sentences. The Government should also announce an end to preventive detention and repeal preventive detention laws;

—to order investigations into all recent reports of torture and ill-treatment of detainees. Although some cases seem to have been investigated, it appears that others have not;

—to enact policies that will ensure against mistreatment of students and laborers at demonstrations and strikes. Such policies should include enforcement of strong sanctions against officials who use excessive force in effecting arrests, and should provide for a stronger state role in preventing abuses of laborers by company-employed agents;

—to recognize the right of those of any and all political orientations to assemble peacefully, and to cease the practice of arresting or "picking up" individuals when there are no reasonable grounds to believe they have committed what could fairly be considered crimes.

We make several recommendations for legislative reform, and note that these recommendations are nearly identical to those made in our prior report on human rights and legal process issued in early 1987. We also note that all of the political parties have discussed reform of these laws; we urge the National Assembly to legislate these reforms in as expeditious a manner as possible.

We believe that the National Security Law should be redrafted, as it is vague and permits punishment for peaceful political expression. We believe, for example, that the prohibition on "praising," "encouraging," or "siding" with an anti-state organization is an invitation to abuse. We call for similar reform of the Law on Assembly and Demonstration. Although a government may fairly punish the willful incitement of violence, we believe that the provision enabling the authorities to prohibit an assembly or demonstration "greatly feared" to cause "social unrest" is also an invitation to abuse, and has been used to stifle peaceful expression of political opinions.*

Finally, we strongly urge measures to restrict the domestic political surveillance and interrogation activities of both the Agency for National Security Planning and the Military Security Command. We welcome proposals that have been made recently to restrict their activities, and we urge prompt enactment and implementation of such restrictions.

* We also call for revision of two other laws which, although discussed at length in the 1987 Asia Watch report, are not described in detail in this report. They are the Minor Offenses Act,

which permits punishment on the vague charge of "spreading groundless rumors,"* and a Criminal Code provision on defamation against the state. Though we believe that individuals should have recourse to the laws of libel and slander, we oppose any law that seeks to punish those who defame the state, as it invites authorities to punish legitimate expression of political opinion.

I. INTRODUCTION

Over the past sixteen months, the Republic of Korea has experienced major changes, including a series of reforms that augur well for improved observance of internationally recognized human rights. These reforms were largely precipitated by massive demonstrations in the spring of 1987. Opposition politicians, dissident groups, and eventually large groups of citizens -- including many in the country's expanding middle class -- took to the streets in protest against human rights abuses and official efforts to forestall democratic changes. The spring 1987 protests focused on a number of issues, including former President Chun Doo-hwan's April 13, 1987 decision to prohibit debate on constitutional revision; the arrests of hundreds of political dissidents; the indiscriminate and dangerous use of tear gas by the police; and the deaths of students Park Chong-chol, who was tortured to death at the hands of the police in January 1987, and Lee Han-yol, who was killed when a tear gas cannister fired by police struck his head during a June 1987 demonstration.

On June 29, 1987, Roh Tae-woo, then Chairman of the ruling Democratic Justice Party (DJP) and now President, responded to the public outcry by declaring that the government should accede to opposition demands for a series of democratic reforms, including direct presidential elections. He issued an eight-point proposal to the Government calling for, among other measures, a direct presidential election; release of political prisoners; restoration of the civil rights of dissident leaders, including opposition figure Kim Dae-jung; and constitutional reforms to guarantee basic human rights, including "a drastic extension of *habeas corpus*." On July 1, 1987, then-President Chun announced that he would accept Chairman Roh's eight-point proposal.

Some of the reforms mentioned in the eight-point proposal have been implemented over the past year. Among them, the ruling and opposition parties agreed in September 1987 to a constitutional revision allowing for a direct presidential election, which was held on December 16, 1987. Opposition parties charged the government with instigating violence at rallies, manipulating the press and broadcast media, buying votes, tampering with ballots and intimidating opposition supporters. The DJP acknowledged that a few of its supporters were responsible for some irregularities, but insisted that the election results were fair.

Although many Koreans believed opposition claims of election fraud, the large majority — disappointed that Kim Dae-jung and Kim Young-sam, the two leading opposition politicians, failed to unite behind a single candidate — did not respond to calls from some opposition figures to protest the outcome. Roh Tae-woo was announced the winner of the election with a plurality of 36.7% of the vote, surpassing Kim Young-Sam's 28% and Kim Dae-jung's 27% of the vote. Kim Jong-pil, a former Prime Minister under Chun's predecessor, Park Chung-hee, received 8.1% of the vote.

President Roh's DJP fared less well in the elections to the National Assembly, held on April 26, 1988. The DJP won only 33.6% of the popular vote, and only 123 seats in the expanded 299-member chamber, making it, for the first time, a minority party in the legislature. Kim Young-sam's Reunification Democratic Party (RDP) won 23.6% of the vote and 58 seats. The Party for Peace and Democracy (PPD), under Kim Dae-jung, won 19.1% of the vote and 73 seats, and Kim Jong-

Pil's Democratic Republican Party (DRP) was again fourth, with 15.4% of the vote, and 35 legislative seats. Independents won 10 seats.

Other reforms instituted over the past year include elimination of many of the restrictions formerly placed on the press, and amendment of laws on union organizing, collective bargaining and collective action. The latter amendments came on the heels of massive worker demonstrations during the summer of 1987. Similarly, hundreds of political prisoners* have been released since June 1987, and the Government and opposition parties are actively discussing reform of many laws that have been used to restrict freedom of expression, association and assembly.

Despite these welcome changes, Asia Watch finds that the Government has continued to restrict the exercise of internationally recognized human rights in South Korea. This report will review and assess government actions over the past year with respect to a number of issues affecting human rights and legal process, including both releases and continued arrests of political opponents of the government, reform of abusive practices accompanying arrest, imprisonment and trial, and reform of laws that have been used to limit exercise of basic human rights.**

* For the purposes of this report, we define political prisoners as persons imprisoned where the primary motivation of the government in imprisoning the prisoners or the prisoner in committing his alleged crime appears to be political.

** For an assessment of recent developments in the area of freedom of expression, see Asia Watch, International Human Rights Law Group and American Center of International PEN Freedom of Expression in the Republic of Korea (Washington, D.C and New York, August 1988).

II. POLITICAL PRISONERS

A. Background: Misuse of the Criminal Justice System in Recent Years

In February 1987, Asia Watch issued a report on human rights and legal process in South Korea. Asia Watch documented a pattern of government misuse of the criminal justice system in the course of official efforts to suppress growing calls for political reform. The Asia Watch report focused on a number of laws and practices that had been used to violate internationally recognized human rights of assembly, expression and association. We summarize some of these below that continue to be relevant to the human rights situation in South Korea. Although the government is considering reform of laws that have been used to restrict human rights (*see* Section IV, below), such reforms have not been implemented and there is evidence that abuses continue (*see* Section IIc.2). Moreover, many who were convicted under these provisions and attendant practices remain in prison. Among the restrictive laws* are the following:

The National Security Law: The stated purpose of this law is to "control anti-state activities which endanger the national security." It defines an "anti-state organization" as "an association or group ... organized for the purpose of assuming a title of the government or disturbing the state." The law severely punishes those found guilty of working on behalf of an anti-state organization, as well as those who have "benefitted the anti-state organization by way of praising, encouraging or siding with or through other means, the activities of an anti-state organization." Frequently used to stifle legitimate political expression, prosecutions under the law have led to almost certain conviction.

* Other measures used to restrict exercise of basic human rights and described in our previous report include laws on preventive custody, Criminal Code provisions on defamation against the state, and the Minor Offenses Act provision prohibiting the "spreading [of] groundless rumors."

Espionage: The Criminal Code of South Korea prohibits espionage, and the National Security Law makes espionage in the service of an anti-state organization punishable by death or penal servitude for life. In our 1987 report Asia Watch indicated that government opponents had been unfairly convicted of espionage and that espionage trials had been accompanied by numerous procedural irregularities. One well-respected South Korean lawyer who has handled many espionage cases told Asia Watch in July of this year that he had yet to see an espionage case in which charges did not appear to have been fabricated.

The Law on Assembly and Demonstration: This law gives the government broad authority to ban a wide range of gatherings. A provision that has been commonly applied against opposition activists prohibits an assembly greatly "feared" to cause "social unrest," a provision which the government has interpreted to include peaceful assemblies at which anti-government opinions have been expressed. In addition, despite the constitutionally guaranteed rights of labor to organize, bargain collectively, and engage in collective action, labor activists have been imprisoned under this law for attempting to exercise their rights.

The 1987 Asia Watch report also described a pattern of procedural abuses used to prevent

individuals and groups from expressing political opinions on important policy issues, including the use of torture to obtain confessions, arbitrary arrests, detentions without trial, and house arrests.

These laws and practices led to thousands of arrests for politically-related offenses between 1980 and June 1987. Many of those arrested were guilty only of peacefully exercising their basic rights of assembly, association, and expression. When Chairman Roh offered his eight-point proposal, South Korea was believed to have over 1000 political prisoners.

B. Prisoner Releases Following Roh Tae-woo's June 1987 Eight-Point Proposal

Since June 1987, several hundred political prisoners have been released. In early July 1987, shortly after the Government announced that it would accede to a range of opposition demands on human rights and democratization, officials announced that 177 persons detained in connection with rallies and demonstrations since June of that year had been released. A short time later, the government announced the release of 357 additional political prisoners.

Upon taking office in late February 1988, President Roh Tae-woo freed some 125 additional political prisoners; 46 more were released in an amnesty in late June 1988.

Dissatisfied that many political prisoners remained in custody, the National Assembly, on July 9, 1988, passed a special resolution calling for the release of all "prisoners of conscience," which it defined as: (1) those who fought against "dictatorial rule"; and (2) those who were indicted under the National Security Law or other anti-communist laws and whose convictions were secured by confessions obtained through torture.* Representatives of the opposition Party for Peace and Democracy told Asia Watch that after passage of the National Assembly resolution, the Ministry of Justice informed National Assembly members that it would attempt to release some prisoners at the end of each month. Indeed, prisoner releases have continued. In mid-August, 36 political prisoners were freed and 52 more were released on October 3.

C. The Remaining Political Prisoners

It is not possible to provide precise estimates of the number of political prisoners in South Korea because frequent releases and arrests of such prisoners result in an ever-changing tally. In December 1987, shortly before Roh Tae-woo took office, a respected church-based human rights monitoring group in South Korea estimated the total at about 1000. In March 1988, this group estimated the number at about 600 and, as of August 1, 1988 it estimated the figure at about 700.

Asia Watch believes that these figures are generally accurate (although the numbers may be somewhat reduced due to the August and October releases), and we note that they are roughly corroborated by official figures. On July 20, 1988, Justice Minister Chong Haechang told the National Assembly's Judiciary Committee that the total number of "security offenders" then in custody equalled 420, including 109 held under the National Security Law, 105 held for arson or violence, 37 held under the Law on Assembly and Demonstration, and 125 held as a result of labor disputes. About ten days later, a Ministry of Justice official told Asia Watch that 765 "so-called political prisoners" remained, including 128 held for "using violence in labor disputes," 47 for

"election fraud," 254 for being "pro-communist," and 336 for espionage. The two totals are not necessarily contradictory in that the second includes 330 detained on espionage charges who may not be encompassed by the first.

* Amnesty International, which coined the term "prisoners of conscience," defines it as those detained "for their beliefs, color, sex, ethnic origin, language, or religion, provided they have not used or advocated violence."

Figures provided by the opposition Party for Peace and Democracy are also in general accord with these estimates. As of July 12, 1988, the PPD list contained 657 names, 300 having been convicted and serving their terms, and 357 awaiting trials. The PPD's list is broken down as follows: National Security Law: 344; Assembly Law: 83; Arson: 44; Election-related: 18; Labor-related: 134; Miscellaneous: 34.

1. Prisoners Who Have Not Benefitted From Government Amnesties

a. Those Imprisoned Before February 25, 1988

Asia Watch believes that the government's amnesties over the past year have excluded many persons who have neither engaged in nor advocated violence. We reach our conclusion based on interviews we conducted with officials regarding standards they have used to determine who will (and will not) be released, as well as Amnesty International's materials on releases of "prisoners of conscience."

Just prior to Roh Tae-woo taking office in February 1988, Amnesty International had designated some 26 persons as "prisoners of conscience"; that is, persons detained for the peaceful expression of their views. On a number of occasions, Amnesty International has stated that its list of "prisoners of conscience" should not be considered comprehensive, given the limited information available on most South Korean political prisoners. Indeed, in light of overbroad laws and unfair procedures that have been used to obtain convictions for politically-motivated offenses (*see* discussion below), Asia Watch believes that many others were imprisoned before February 1988 for the peaceful expression of their views.

Despite the publicity, attention, and expressions of concern directed toward Amnesty International's prisoner-of-conscience cases, 13 of the 26 — one-half — remain in prison as of mid-October 1988. This suggests that the authorities are applying something other than the requirements of international human rights law in determining who will or will not be released from custody. It also suggests that prisoners of conscience about whom human rights organizations are not aware are also likely to have been excluded from the amnesty.

A close look at the apparent standards for release of political prisoners justifies these concerns. According to officials of the Ministry of Justice interviewed by Asia Watch, the exact criteria used for each prisoner release have differed. However, they indicated that four issues are of great importance:

- Whether the political prisoner committed a "serious crime" involving homicide, assault, arson

or "serious violence";

- How long the prisoner has been incarcerated;
- Whether the prisoner has shown "remorse";
- Whether the prisoner has renounced the "basic order of the country."

Our interviews suggest that despite these standards, it is difficult to predict who will or will not be released. For example, when asked whether the time-served criterion was applied in absolute terms or relative to the number of years of a prisoner's sentence, the government officials gave an evasive response, telling Asia Watch that this criterion was only one of four considered in reaching a result. Similarly, they explained that although to be eligible for "parole" a prisoner ordinarily must serve one-third of his term, a "special amnesty" can be granted even though a prisoner has served less than one-third of his sentence. But, when asked why the government has not released National Security Law prisoner Chang Ki-pyo, officials stated that the chief reason was that he has not served one-third of his sentence.

In fact, many South Koreans have voiced concerns about the way in which the government applies standards for prisoner releases. One well-respected lawyer involved in many human rights cases stated:

I don't think there is any sort of principle behind the releases. The government claims it is not releasing those charged under the National Security Law with "heavy crimes" and those charged with violence. But even under this standard, they are not consistent. These are very abstract, ambiguous principles. ... In fact, the government actually looks at what the prisoners will do after their release. And the government is determined not to release those charged and then tortured into confessing they are communists.

A particularly controversial factor in the release decision is the requirement that the prisoner show remorse - a condition that has the potential of imposing a serious burden on the freedom of conscience when imposed on those imprisoned for their peaceful political statements and acts. While it appears that a letter of repentance has not been required of all political prisoners wishing to be amnestied, the government has apparently attempted to obtain such letters in many cases as a stated condition of release. A human rights activist with close ties to the families of political prisoners raised questions about the government's good faith in imposing such a condition:

Some political prisoners are told that if they agree to repent, they will be released. Once they agree and write the letter, the government fails to live up to its promise to release. For instance, Lee Hae-kyung and Kim Nam-ju [two prisoners arrested in 1979 in the "South Korean National Liberation Front" case]. They wrote repentance letters renouncing their former acts. But they were not allowed out.

Government officials claim that in the case of political prisoners, amnesty depends not so much upon a display of remorse as it does upon proof that the prisoner will not commit similar "crimes" upon release. The showing of remorse, according to officials interviewed by Asia Watch, is one

way of assessing the prospects of such "recidivism."

Over the past year, informed observers have argued that the government is especially reluctant to release persons who are likely to assume (or resume) leadership roles in the dissident community and those whose views are regarded as most radical. Observers have also suggested that victims of severe torture have not been released due to the risk of government embarrassment. While these factors indeed appear to have played a role in the government's decision whether to release political prisoners, we note that those amnestied over the past year include persons in each of these categories. Thus, it is very difficult to generalize as to why the government has not released certain political prisoners.

The case of prisoner Chang Ki-pyo provides an example of a dissident leader who has not been amnestied. Information available to Asia Watch suggests that Chang may be imprisoned for the peaceful expression of his views and that the government's failure to release him may be due to an official concern that he would resume his dissident activities if released. Chang, a leader in the democratization movement for over 15 years, served as policy coordinator for the United Minjung Movement for Democracy and Unification (UMMDU), a grass-roots organization. He was taken into custody on May 23, 1986. Two days later he was charged under the National Security Law and other laws for having spoken to a group of people after a rally, held on May 3 of that year in Inchon, which had been broken up by police. Chang was also charged for allegedly changing UMMDU into a "pro-communist" organization. This latter charge was based on an unfinished memorandum concerning the "program" of UMMDU which had been found on his person at the time of his arrest. The memorandum allegedly contained the phrases "limitations on private property" and "common sharing of means of production." Chang was beaten while in custody, and on November 17, 1986, Chang was sentenced to seven years in prison. As noted above, the government informed Asia Watch that Chang remains imprisoned because he has not yet served one-third of his sentence.

Others have been confined longer than Chang. For example, Soh Sung, a Korean from Japan and a postgraduate student at Seoul National University, was arrested in 1971 and charged with spying for North Korea and instigating student demonstrations under instructions from North Korea. Although Soh, a Japanese resident, had travelled to North Korea, he denied the government's charges against him. He explained that his search for national identity encouraged his interest in both North and South Korea, which he believed should be reunified peacefully. Soh appeared in court with his face and hands severely burned. He stated that his burns had resulted from a suicide attempt made because he "could not endure the mental and physical pains during interrogation," which reportedly included beatings with clubs. Although his conviction was believed to be based primarily on his confession, which he retracted at his trial, the authorities did not investigate his torture allegations, and Soh was sentenced to death. His sentence was later commuted to life imprisonment. Soh has been adopted by Amnesty International as a prisoner of conscience.*

* Amnesty International, South Korea. Violations of Human Rights (London, 1986), at 25, 79.

As illustrated by these cases, the unfairness of prosecuting defendants for the peaceful expression

of their views has been compounded by procedural abuses accompanying political cases. In recent South Korean history, procedural abuses - such as the use of torture during interrogation - also appear to have enabled the authorities to fabricate conspiracies against the Government,* or to extrapolate such "plots" from fragmentary evidence. In particular, this has occurred in a number of cases involving purported "spy rings" allegedly "uncovered" by South Korean authorities. Where such abuses have occurred, reevaluation of convictions is warranted.

One such case is the January 20, 1986 espionage convictions of South Koreans Kim Song-man and Yang Dong-hwa, both of whom were sentenced to death. Thirteen others in this case were also sentenced to varying prison terms. Three of the defendants, Kim, Yang, and Hwang Tac-kwon, who was sentenced to life imprisonment, studied at Western Illinois University during the early 1980s. This has provoked concern that the cases against them, particularly an accusation that they were involved in an American-based "spy ring," were brought in order to stifle political activity by South Koreans studying abroad. According to the U.S. Embassy, Kim and Yang were charged with intelligence-gathering and subversive activities on behalf of North Korea after purportedly having been recruited by a North Korean "collaborator" in New York. According to the September 11, 1985 *Korea Herald*, Yang was accused of travelling to North Korea and receiving instruction by officials to trigger an uprising in the South, and Kim was accused of travelling to Budapest, where he allegedly received ideological and political education for four days at the North Korean Embassy, and to East Berlin, where he allegedly became a member of the Workers' Party.

*Asia Watch, Human Rights in Korea (New York, 1986), pp. 1-89; South Korea. Violations of Human Rights, at 24-28.

In a detailed statement appealing Kim's conviction and death sentence, a lawyer for Kim acknowledged that Kim had met and received funds from North Korean officials in East Germany in 1984. However, the lawyer denied that Kim had any intention of working on behalf of North Korea. He argued that Kim, a student activist, intended to use the funds on behalf of the student movement. The severity of the charges and sentences has caused persons with knowledge about this case to be somewhat reticent in discussing it openly, and thus we are not in a position to comment in detail on all of the facts. However, we have been able to obtain enough information to lead us to have grave concerns about the fairness of the proceedings and sentences. According to reports received from family members and others close to the case, defendants in this case went through long periods of incommunicado interrogation during which they were tortured. According to a statement by one defendant who is still in custody, "I was beaten and watered and beaten..., until I signed the plot they made." According to the defendant, this forced confession was the only evidence used to convict him. Another defendant, who was detained incommunicado for at least six weeks, was not presented with an arrest warrant until about two months after his arrest, a violation of South Korean law. Again, we believe that other defendants suffered similar procedural abuses. As of July 1988, eleven of those convicted in this case remained in prison.

Our concerns are only accentuated by the closed nature of the proceedings in these cases. Apart from two foreign observers at one of the trial sessions, only attorneys and close family members

were permitted to attend the trials. Although a desire to avoid divulging sensitive intelligence matters was purportedly the reason for this restriction of access to the trial, several factors give us reason to fear that the government's principal motive was to avoid public scrutiny.

First, the government provided detailed and lurid public accusations against these defendants upon their arrests, raising questions about its desire for secrecy. Second, on November 18, 1985, Korean authorities announced that Ahn Sang-kun, a member of the so-called West German "spying" (one of the two alleged spy rings broken in the case), had committed suicide in prison some time after his arrest in September 1985. According to a report received by the North American Coalition for Human Rights in Korea, no family member or lawyer had seen Ahn after his arrest, and he had not been present at his first trial session on October 15, 1985. Moreover, it was reported that family members were not permitted to view Ahn's body before it was cremated. The death raises questions about the authorities' treatment of the defendants in this case, particularly in light of the government's pattern of torture of political offenders.

Finally, although the three defendants who had studied in the U.S. are accused of having been recruited by a North Korean collaborator in the United States, U.S. authorities have not filed any charges in this matter. In fact, one of the Koreans identified by the Government as a North Korean agent in the U.S. has filed a libel suit against five Korean-language newspapers, an English-language paper, and a Northern Virginia television station, each of which published or broadcast statements that repeated the South Korean Government's allegations against him. According to the Washington-based International Human Rights Law Group, which has filed the suit on behalf of Lee Chang-sin, "[t]he suit alleges that the media defendants falsely published and broadcast statements in September of 1985 that Mr. Lee is a North Korean agent, and that the statements were uttered without any serious attempt to investigate their factual basis." According to a Law Group statement issued in August 1986, "[t]he case reflects a systematic attempt by the Government-controlled media in South Korea to intimidate, harass, and injure Koreans in the United States who express legitimate dissent against the Seoul regime." Each of these factors raise serious questions that could have been aired more openly had unrestricted access to the trial been permitted.

b. Prisoners in Preventive Custody

South Korean law allows the government to detain prisoners without trial after their prison terms expire, as a form of preventive custody. The preventive custody statute used against political prisoners is variously called the Social Safety Act or the Public Security Law. (Another law, the Act for the Protection of Society, apparently has been used primarily against common recidivist criminals.)* The Social Safety Act provides for three kinds of restrictive measures to be taken against persons who have completed sentences for violating specified laws. The most severe measure, preventive custody, allows for a two-year administrative "extension" of the completed sentence for those deemed to be in "danger of committing the crime again." The two-year preventive custody period can then be renewed, apparently indefinitely. Under the law, one of the criteria for determining whether to exempt a prisoner from preventive custody is whether the individual "has firmly conceived anti-communism." Those deemed insufficiently anti-communist

face the possibility of continued incarceration.

President Roh's administration recently released two persons who had been held in preventive custody. On May 25, 1988, Soh Joon-shik, who had been sentenced originally on charges of "anti-state" activities and espionage on behalf of North Korea, was released after serving a seven-year sentence and an additional ten years in preventive custody. On June 10, 1988, the government released Kang Jong-kon after he had served a five-year sentence for espionage and approximately seven years in preventive custody. Asia Watch welcomes these releases, but remains concerned about reports that the movements and activities of those released remain restricted.

*See A Stern. Steady Crackdown, at 22-27 for a complete discussion of the preventive custody legislation in effect in the Republic of Korea.

Although the Ministry of Justice refused to provide Asia Watch with the number of persons held in preventive custody, we have received a report that fifty men, most of them over 60 years old, continue to be held in preventive custody in Chongju Protective Custody Prison. Most of their original sentences were from 10 to 15 years, and most appear to have been held in preventive custody for an additional 10 years or more. Asia Watch received a report that the vast majority of these men were originally imprisoned under national security-related legislation for activities during the Korean War (1950-53). One human rights activist stated: "Many of those still held [in preventive custody] were fighting for the North, and should have been treated as war prisoners, not criminals." Amnesty International believes that most of these prisoners were first arrested during or after the Korean War on suspicion of being North Korean agents, for allegedly joining the armed resistance against the United States-backed government of Syngman Rhee in 1948-50, or for having been drafted as laborers by the North Korean army during the Korean War.*

Asia Watch has been informed by a reliable and well-informed source in South Korea that officials frequently request the prisoners held in preventive custody to execute statements of repentance in which they abandon former political positions, and indicate an intent to work within the current system. But the authorities reportedly acknowledge to such prisoners that such statements will not guarantee their releases.

* Sec. "South Korea: Detention of Prisoners of Conscience and Torture Continue,*
AI Index: ASA 26/16/88, August 1988.

The following prisoners are believed to be held in Chongju Protective Custody Prison in preventive custody.*

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LEE Chong	78	15 yrs?	13 yrs
SHIN Hyon-ch'il	76	6 yrs?	13 yrs
LEE Rae-seon	67	24 yrs?	10 yrs
KIM Kwon-shik	67	?	13 yrs
KIM Yong-seung	54	22 yrs?	12 yrs
SONG Sang-joon	63	22 yrs?	10 yrs
KWON Nak-ki	41	10 yrs	7 yrs
YOON Hee-bo	71	15 yrs?	10 yrs
CHO Keum-dok	65	10 yrs?	13 yrs
KIM Kwang-gil	65	15 yrs?	13 yrs
KIM Kwang-sam	73	20 yrs?	8 yrs
CHOI Kong-shik	65	20 yrs?	13 yrs
KIM Byong-in	75	20 yrs?	10 yrs
LEE In-no	77	20 yrs?	12 yrs?

* This list is reproduced from the National Coalition for Human Rights in Korea Bi-weekly Report Vol. VIII, No. 10, June 15, 1988 at 5. The list comes from a well-informed source in South Korea. The ages are approximate; the original sentences and the years held in protective custody are uncertain when followed by a question mark.

CHOI	Nam-kyu	76	15 yrs?	13 yrs
KANG	Dong-keun	67	20 yrs?	13 yrs
KIM	Hae-sop	64	20 yrs?	13 yrs?
AHN	Hee-sook	60	15 yrs?	13 yrs?
YOON	Ki-nam	63	10 yrs	6 yrs
KIM	Bok-son	77	20 yrs?	13 yrs?
HAN	Baek-ryol	68	15 yrs?	13 yrs?
SHIN	In-su	68	15 yrs?	13 yrs
CHUN	Jin	68	20 yrs?	13 yrs
KIM	Yong-dal	54	15 yrs?	8 yrs
KIM	Tae-soo	63	15 yrs?	13 yrs
LEE	Se-kyun	63	15 yrs?	13 yrs
CHONG	Su-hak	75	15 yrs?	13 yrs
IM	Bang-kyu	56	15 yrs?	13 yrs
YANG	Jae-yong	70	15 yrs?	13 yrs
KIM	Hyeon-jin	68	20 yrs	13 yrs
KIM	Yong-kyu	68	20 yrs	11 yrs
HAN	Ch'oon-ik	68	15 yrs?	13 yrs
LEE	Bok-nam	60	20 yrs?	13 yrs
KIM	Yeong-man	65	20 yrs?	13 yrs
KEM	Jae-seon	65	15 yrs?	13 yrs
KIM	Yeong-tae	60	15 yrs?	13 yrs
CHUN	Ch'ang-ki	70	15 yrs?	3 yrs
KWON	Sang-ch'oo	70	20 yrs?	12 yrs
PAK	Soon-ch'ul	50	6 yrs?	11 yrs
KIM	Kook-hong	63	20 yrs?	6 yrs
HWANG	Yong-kap	64	20 yrs?	13 yrs
LEE	Oh-bong	60	10 yrs?	13 yrs
CHUNG	Dae-ch'eol	62	20 yrs?	13 yrs
KIM	Joong-jong	65	15 yrs	11 yrs
LEE	Hak-keun	66	15 yrs?	13 yrs
PAE	Dong-joon	66	15 yrs?	13 yrs
KO	Kwang-in	54	20 yrs	12 yrs

2. Recent Arrests

Asia Watch is concerned that many of those arrested since Rob Tae-woo's inauguration on February 25, 1988 may also have been imprisoned for the peaceful expression of their views.

There are several bases for our concern about these recent arrests. First, we note that arrests of persons for politically motivated offenses have been quite common in the period since February 25. Indeed, materials provided by human rights monitors in South Korea suggest that, as of mid-June 1988, some 150 political prisoners had been imprisoned after February 25. *

Second, many recent detainees have been arrested under the National Security Law and the Law on Assembly and Demonstration, two provisions which in the past have been widely used to stifle legitimate dissent. (As our discussion below explains, revision of these laws is being considered but has not yet taken place.) According to figures provided by human rights monitors in South Korea, at least 80 persons were arrested under these provisions between February 25, 1988 and mid-June 1988.

Third, we note that of twelve prisoners of conscience adopted by Amnesty International between President Roh's inauguration and August 1988, six were arrested after the inauguration.** Moreover, both the general difficulty and the time lag involved in obtaining information on prisoner cases suggests that the number of prisoners imprisoned for peaceful expression during this period is likely to be greater than the current number of prisoners of conscience adopted by Amnesty International.

* The figures also suggest that, as of mid-June 1988, the large majority of political prisoners had been imprisoned since June 29, 1987, the date of Roh Tae-woo's announced commitment to democratic reforms.

** South Korea: Detention of Prisoners of Conscience and Torture Continue,* AI Index: ASA 25/16/88, August 1988.

The detention of the Reverend Shin Chul-ho of the Pekma Methodist Church in Pupyong, near Inchon, illustrates our concern about recent arrests. The case involving Shin, who was arrested on August 18 and released on September 30, also appears to provide evidence for two observations made elsewhere in this report: that such short-term detentions of political prisoners are not uncommon, making it difficult for human rights groups to provide accurate documentation; and that the new political climate has made authorities somewhat more reluctant to seek convictions of persons for peaceful expression of their views. Reverend Shin was arrested in late August in connection with the showing of a slide presentation on North Korea. We have received two slightly differing accounts of the event; both provide ample cause for alarm over the government's actions. According to the North American Coalition for Human Rights in Korea, Shin was arrested under the National Security Law, and four lay members of the church are also believed to have been taken into custody. The NACHRK report states that Reverend Shin had shown his congregation a set of slides taken in North Korea by members of the National Council of Churches of the U.S.A.,

who visited the North in 1986. According to the report, the slides depict North Korean Christians, monuments, development projects, museums, and government officials with whom the delegation met; the slides are also believed to have been shown publicly and without incident to many congregations in South Korea over the past two years. The report indicates that some twenty policemen took part in the arrests, seizing books and documents as well as medical equipment and records. (The church, in an industrial suburb of Inchon, has also contained a medical clinic for laborers and their families.) Some have speculated that the official action in this case may have reflected the government's desire to discourage interest in the North among South Korean laborers, who apparently make up most if not all of the Pupyung congregation.

A similar, but slightly varying and less detailed report in the August 23 issue of *The Korea Herald* stated that Reverend Shin Chulho and a 21-year-old churchgoer, Yang Chung-gi, were arrested on August 22 for permitting two "radical students to present a slide show inside the church." According to the *Herald* report, the two students were arrested on August 18.

According to the Washington-based Korean Institute for Human Rights, Reverend Shin and Mr. Yang were released on September 30; charges against them are reported to have been dropped. The Institute's report suggests that others arrested in this case were released soon after their arrests.

III. PROCEDURAL ABUSES

In our previous report,* Asia Watch documented numerous abuses suggesting that government opponents had been denied basic procedural rights and convicted unfairly. Some of the abuses that we have reported, and that are briefly summarized above in Section II.A., have indeed subsided. The government apparently no longer places opposition politicians or dissident figures under house arrest to restrict their movement, and the new constitution seems to prohibit the practice. ** In addition, it appears that opposition politicians and dissidents are now allowed to hold outdoor rallies and meetings, and that anti-government organizations that in the past had been subjected to restrictions are now functioning with much greater freedom. Such is the case with the United Minjung Movement for Democracy and Unification, which the government had attempted to close permanently in November 1986. Nonetheless, Asia Watch continues to be concerned by ongoing torture and mistreatment of detainees, as well as arbitrary arrests of opponents of the government.

A. Torture and Mistreatment

1. Detainees

A serious ongoing abuse is the torture and mistreatment of detainees. There is little question that after the tragic death by torture of student Park Chong-chol in January 1987, reports of torture declined. This is in part due to official moves against alleged torturers prompted by South Korea's more democratic climate: opposition politicians and the press have raised the issue of torture on numerous occasions over the past year, causing government officials to take action against alleged torturers.

* A Stern. Steady Crackdown, at 67-86.

** Article 12(1) of the Constitution provides that "no person shall be ... placed under preventive restrictions ... except as provided by law and lawful procedures." The past practice of house arrest did not appear to be authorized by law, but was effected at the discretion of the authorities.

For example, on January 13, 1988, the ruling Democratic Justice Party called for a "thorough" re-investigation into the allegations that former senior government officials had been involved in a cover-up of Park's death.* Public concern about this case was a major factor in the decision of the ruling party, which had just captured the presidency, but which was about to face crucial National Assembly elections.

Shortly after this announcement, on January 21, Prime Minister Kim Chung-yul was subjected to heavy questioning on the issue of torture in a plenary National Assembly session. Representative Park Sil of the Party for Peace and Democracy (PPD) claimed that "hidden criminals" remained in Park Chong-chol's death. He urged the government to identify senior officials who, he claimed, secretly met to plot a cover-up after the death. Similarly, Representative Kim Jeong-soo of the Reunification Democratic Party (RDP) claimed that prosecutors failed to conduct a thorough investigation into the torture case due to "outside pressure." Kim also accused the government of

working to hide the truth and demanded that the legislature invoke a "parliamentary right" to investigate the alleged cover-up. ** The New Democratic Republican Party (NDRP) also voiced its concerns on the issue. According to *The Korea Herald*, Rep. Cho Yong-jik of the NDRP "questioned the possibility of the police and the prosecution plotting to cover up the 'Kwon In-suk scandal [a case involving sexual assault of a detainee, discussed below]' as they did the Park case."

* The Korea Herald, January 14, 1988.

** The Korea Herald. January 22, 1988.

Eight days later, on January 29, the South Korean Supreme Court ruled that a policeman who had been accused of sexually assaulting and torturing Kwon In-suk, a young labor activist, would have to stand trial. In early June 1986, Kwon was summoned to the Puchon police station for interrogation on charges of forging documents necessary to obtain factory work. At the station, she was sexually abused by a police officer, Mun Kwi-dong. According to one report, Kwon unsuccessfully attempted to commit suicide after her ordeal. When friends at the same detention facility learned of the assault, they reportedly asked relatives to contact the National Council of Churches of Korea, which dispatched a team of nine human rights lawyers to interview Kwon and investigate her charges. In a petition to authorities, the lawyers alleged that Kwon had been abused on two occasions.

The authorities fired police officer Mun, but neither he nor any of his superiors were prosecuted initially. A team of 166 lawyers appealed the decision not to prosecute, and the Supreme Court's ruling earlier this year vindicated their position. In July, Mun was sentenced to five years in prison for sexual harassment, misconduct in office and assault.*

* The Korea **Herald**, July 24, 1988.

Similarly, on March 13, 1988, Kang Min-chang, the former director general of the National Police Headquarters, was convicted for attempting to falsify the cause of death of Park Chong-chol.* Although his suspended sentence angered many human rights activists -- and appeared to demonstrate the continued limits on judicial independence** — the Seoul District Criminal Court's verdict was nonetheless significant. The Court accused Kang of failing to make every effort to uncover the cause of the death and of forcing Dr. Hwang Jok-jun, of the National Institute of Scientific Investigation who administered the post-mortem on Park, to fabricate the report of the examination of the body. The Court said:

We believe the government would have lessened the public outcry if you had done your best in unearthing the true picture of the torture-murder case at the beginning of the incident.***

Cases like these are likely to have deterred additional instances of torture and, by their precedential effects, increased the likelihood that future torturers will be punished.

Nonetheless, the problem of mistreatment of detainees has continued. In a report issued in August, Amnesty International described five recent cases in which the authorities are alleged to have tortured or mistreated detainees. The victims in two of the cases had been persons arrested for

their political activities; the three others were common criminal suspects. Two of the criminal suspects claimed that they had been subjected to water torture and beaten with iron pipes; the third is believed to have died as a result of water torture.* Amnesty International also noted reports that students arrested during demonstrations are often beaten.

* The Korea Herald. March 13, 1988.

** See Section IV.

*** Ibid. For a discussion of other police officers convicted in the Park case, see Section IV, below.

Asia Watch has recently received a report of the possible death by torture of teenager Park Jaehoon on July 7, 1988. Park was being detained in Chunchon prison in Kangwon province. He was not a political prisoner, but had been arrested on June 28 for alleged involvement in a "gang scuffle." He was detained by the police until July 5, when he was placed in the custody of the prosecution authorities. Although prison officials claim that he hung himself, a human rights organization in South Korea has investigated the case thoroughly and has identified ten factors which tend to cast doubt on the suicide explanation. These include:

- The boy's body was found with a large wound on his stomach;
- The noose he allegedly used was tied to a wooden nail which investigators were able to pull from the wall by hand;
- Although prison guards on duty at the time claimed the suicide took place between two "rounds" of observing the detainees, the rounds in question were only two minutes apart.
- Prison guards on duty at the time claimed that when Park was discovered at 7:52 p.m., they tried to revive him through artificial respiration for 30 to 40 minutes; however, the doc

* "South Korea: Detention of Prisoners of Conscience and Torture Continue,* AI Index: ASA 25/16/88; see also. The Korea Herald, January 19, February 20 and May 13, 1988. We note that in the case of the three common criminal suspects who were reportedly tortured, the South Korean press reported the arrests of several police officers. We do not know whether prosecutions went forward, nor do we have information on investigations into the two other cases of mistreatment described in the text.

2. Mistreatment of Students and Laborers at Demonstrations and Strikes

Asia Watch is concerned by reports that police have continued to use excessive force in arresting students in demonstrations. For example, one group of plainclothes policemen sporting motorcycle helmets and dubbed the "White Skull Brigade" are believed to have beaten students in recent attempts to break up several rallies; they have reportedly used excessive force on a number of occasions.

We are also concerned about mistreatment of laborers, and have received numerous reliable reports about the growth of the so called "Kusadae" phenomenon in South Korea. The "Kusadae" are "company defense corps" used by management to quell strikes. After the massive strikes in the

summer and fall of 1987, the government ended its direct intervention in labor disputes. As a result, companies have recently turned to these "private armies," which often use extreme violence to dissuade workers from engaging in collective action. Although the government does not appear to be directly involved in this phenomenon, we are concerned that the government has not been as vigorous as it should be in preventing its occurrence. When queried about efforts to control the violence caused by "Kusadae," Ministry of Justice officials stated that "our basic policy is that disputes should be settled between labor and management, so we refrain from intervention."

One case illustrating the actions of Kusadae involved Kwon Yong-mok. Kwon is currently serving a prison term for allegedly causing bodily harm resulting in death and for allegedly violating labor laws. We are concerned that he may have been unfairly charged in this case due to his active involvement in a tense labor dispute. The organizer of the trade union representing workers for Hyundai Engineering Corporation, one of the first independent unions within the Hyundai conglomerate, Kwon later formed a coalition of all of the Hyundai group unions. Kwon was arrested shortly after the 1987 wave of strikes receded, and was released in the spring of 1988. He immediately returned to union activities, this time running in an election for union officials. A week before the election, the company fired him; nevertheless, the workers elected him chairman. Hyundai Engineering then refused to recognize the slate of elected union officials. A 15-day sit-in strike ensued. The stand-off was broken when the company suggested a dialogue. As soon as Kwon emerged for negotiations, company officials reportedly grabbed him and physically detained him in an office away from the other workers. A "Kusadae" then is believed to have entered the strike area in a violent attempt to disperse the strikers. A battle ensued and one member of the "Kusadae" was struck by a stone and died. Kwon was reportedly charged with responsibility for the death.

B. Mass Arrests and Pick-Ups

The government has continued its practice of arbitrarily arresting citizens who engage in political protest or are deemed likely to do so. In our previous report on human rights and legal process,* we described this practice in which the government arrests citizens without a reasonable basis to believe that they have committed what can fairly be considered crimes. In some cases, detainees are physically removed from the streets to prevent their participation in meetings and rallies; in other cases, individuals are taken for questioning in what appears to be an effort to intimidate and deter them from future political activities. Detainees have been interrogated and released without arrest; booked and processed through an expedited "summary court" proceeding on charges of "spreading groundless rumors" or other offense under the Minor Offenses Punishment Act; or held for investigation on more serious charges.

* A Stern. Steady Crackdown, at 11-16.

Article 3 of the Law on Assembly and Demonstration prohibits a variety of assemblies and demonstrations, including those that "achieve the purpose" of banned political parties, influence trials, or violate the laws and regulations concerning the maintenance of public peace and order. In recent years, a commonly applied provision of the law appears to have been Article 3, Section 1(4),

which prohibits "assembly or demonstration which shall be greatly feared to cause social unrest." Although Asia Watch believes that any government has a right to punish those who violate reasonable regulations on the time, place, and manner of demonstrations, we are concerned that the government has interpreted the term "social unrest" so broadly as to include activities that constitute peaceful expression of opinions, association, and assembly.*

* Article 4 of the Law on Assembly and Demonstration requires that the sponsors provide notice to the police of assemblies and demonstrations forty-eight hours in advance, and that such notice describe the assembly or demonstration's "purpose, date and time (including hours required), place, estimated number of participants, the address, name and occupation of the sponsor, the address, name, occupation and lecture subject of the lecturer, and the proceedings of the assembly or demonstration." As mentioned in the text, the Law also empowers the police to prohibit in advance demonstrations upon finding, inter alia, that the demonstration is "greatly feared to cause social unrest." The new Constitution eliminates any requirements for licensing of assembly, however, it is not clear that this Constitutional provision affects police discretion to ban demonstrations in advance. In practice, many, if not most, organizers of demonstrations have not provided the police with prior notice (although demonstrations are often known to the police and the public in advance). According to a Korea Herald report of June 23, 1988, the official practice of "restricting peaceful activities" has encouraged students and laborers from providing prior notice.

We do note that the authorities have recently permitted many assemblies that might have been suppressed in previous years. However, their actions have been inconsistent, as they have also restricted a number of demonstrations. Some observers have speculated that the subject of demonstrations and the political orientation of the demonstrators, rather than the potential for unrest, are the most important factors in determining what actions the authorities will take.

This problem is illustrated by figures provided by the government during the period leading up to the Seoul Olympic Games that began in September. On August 2, 1988, the National Police Headquarters announced that the police had arraigned more than 42,412 suspects since June 27, 1988. The National Police Headquarters stated that out of 42,412 persons arraigned, 9,958 suspects were arrested and 28,018 were "booked without physical detention."*

It is difficult to gain information on the precise number of people swept up in these arrests, in large part because South Korean human rights groups direct their energies more toward monitoring torture, violence against workers and political trials, and because the detainees are often held for short periods of time. While mass arrests occur frequently, often they become known to a wider audience only when a well-known activist is involved. For example, on June 24, 1988, Lee Pu-young and 140 other citizens were rounded-up at a protest demonstration in front of the National Assembly. The protesters were calling for an investigation into the Kwangju incident, a 1980 uprising against martial law in which soldiers are believed to have killed at least several hundred South Korean citizens. Many of those detained in connection with the National Assembly protest were quickly released, but Lee Pu-young and some others were held under the Law on Assembly and Demonstration. Lee was not released until late September 1988.

* In this instance, we believe that those described as being "arraigned" were "picked-up*" by police and held for short periods; those "arrested" were issued warrants, detained for longer periods, and either indicted or released; and those "booked without physical detention" were released pending investigations that might lead to indictments.

Students and other young persons are also subjected to "spot checks," usually around rally sites or near campuses, but sometimes also near their homes and elsewhere. Students told us that if they are found to possess political pamphlets or discussion papers, their possessions are often confiscated, and they may be held for questioning or arrested. In April 1988, Kim Kwong-hoon, then director of the Korean Christian Student Federation, was picked up for possessing a pamphlet about the bombing of a Korean Airlines plane in November 1987. Kim was placed in detention and his home was searched. The authorities found prohibited books about North Korea in his home, and these books are believed to have subsequently formed the basis of a charge under the National Security Law. Kim was reportedly released without trial. Asia Watch has received reports of pick-ups of many other students for possession of underground pamphlets and materials.

Laborers engaged in collective action have also been arrested in what appears to be an arbitrary fashion. On July 26 and 27, 1988, the job after negotiations with management broke down. The government reacted sternly to the strike, calling it illegal by citing laws that bar public servants from striking.* Human rights lawyers disputed the contention that the strike was illegal, citing an earlier strike of subway engineers against which the authorities apparently did not act. Asia Watch received reports that some 6,500 riot police were deployed to break the strike. A total of 1,463 engineers were detained. Although there was "some resistance, the engineers gave in without violence."** The following day, the police set free 1,413 of the arrested engineers; 20 were charged and 30 were held pending further investigation.*** Again, the number of persons charged or held for investigation represents a small fraction of those detained, leading to the suspicion that the authorities arrested the vast majority of workers simply to clear the streets, and with no intention of pressing charges.

* The Korea Times. July 27, 1988.

** Ibid.

*** The Korea Times. July 28, 1988.

IV. REFORM OF THE LEGAL SYSTEM

A. Legislative Reform

Asia Watch has urged the South Korean government to reform laws that in the past have led to many documented abuses. With last year's revision of the Constitution of the Republic of Korea, two important reforms were instituted: one revised the procedure for constitutional review of laws, and the other expanded the right of *habeas corpus*.

The new Constitution abolished the former Constitutional Committee and replaced it with a Constitutional Court empowered to review, upon a citizen's petition, the constitutionality of a law.* On July 23, 1988, the National Assembly enacted legislation reiterating the new Constitutional Court's powers. Formerly, the Constitutional Committee reviewed the constitutionality of a law only upon the request of the courts, and individual petitioners had no right to cause the court to make such a request.** The Committee had never rendered a significant constitutional decision.

The new Constitution also guarantees that all detainees have the right to request a review of the legality of their detention. The new Constitution, like its predecessor, the 1980 Constitution, provides that

* See Constitution of the Republic of Korea (1987), Chapter VI, esp. Art. Ill (1)(5).

** See Constitution of the Republic of Korea (1980), Art. 112.

Any person who is arrested or detained shall have the right to request the court to review the legality of the arrest or detention.*

Previously, however, this right had been limited by a contradictory provision in the Code of Criminal Procedure, Article 217-2, which provided that *habeas corpus* petitions could not be filed in cases when the accused was charged under the National Security Law, the Law on Assembly and Demonstration, the espionage law, or any other statute providing for imprisonment of five years or more. The new Constitution guarantees the right of *habeas corpus* in all cases by invalidating Article 217-2 and all other laws contrary to the provisions of the Constitution. **

Other reforms contained in the new Constitution include the requirement in Article 12(5) that arresting authorities inform a detainee of his or her right to the assistance of counsel. The 1980 Constitution guaranteed the right to prompt assistance of counsel, prohibited torture and excluded from court confessions obtained involuntarily. But lawyers were often denied access to clients, and prisoners alleged that during this incommunicado period the authorities in many cases obtained confessions by torture. The new obligation to inform detainees of the right to counsel may help ensure that detainees enjoy the right to assistance of counsel in practice, which may in turn help end torture to obtain confessions. Article 12(5) of the new Constitution also requires the authorities to inform relatives without delay of a detainee's place of detention. Statutes had already theoretically established an obligation to inform; however, relatives were often unable to see detainees because the authorities refused to disclose their places of detention, sometimes while detainees were being

tortured. The new constitutional guarantee may strengthen relatives' claim to such information and thus help curtail secret detention.

* Constitution of the Republic of Korea (1987), Article 12(6); Constitution of the Republic of Korea (1980), Article 11(4).

** Constitution of the Republic of Korea (1987), Supplementary Article S.

Being relatively new, these constitutional reforms have yet to be fully tested. We note with concern, however, a recent report indicating that these new rights have at times been violated. Amnesty International has indicated that it has recently received a number of reports of relatives being denied information about the location of prisoners or being prevented from seeing them for some time. *

Over the past several months, all of the major political parties in South Korea have expressed support for reform of legislation used against political opponents, although the extent of desired revision has varied from one party to the next.** We welcome these sentiments, and hope that they result in early enactment and implementation of legislative reforms.

Such reform is not only an important step in curbing future arrests of peaceful political opponents; it could also affect the current population of political prisoners. Article 1 of the Criminal Code of South Korea provides that persons awaiting trial under a law that is subsequently made more lenient such that their acts no longer constitute crimes must be released.

* Sec. "South Korea: Detention of Prisoners of Conscience and Torture Continue," AI Index: ASA 25/16/88, August 1988.

** See, eg, The Korea Herald, June 17, 23, 24, and 29; July 19 and 29; The Korea Times. June 24, 1988, reprinted in FBIS-EAS-88-122, June 24, 1988.

There have also been calls across the political spectrum for the reform of the Agency for National Security Planning (ANSP).* These proposals reflect concern about the Agency's historic involvement in domestic political issues unrelated to espionage. Proposals to restrict the activities of the ANSP were also presented in February 1988 by the Democratization and Reconciliation Council, established a month earlier to advise then President-elect Roh on implementing his campaign pledges to institute democratic reforms and bring about national reconciliation.** The Council also called for the government to prohibit the Military Security Command and other military agencies from interrogating civilians.***

In the past, some of the most severe torture of civilian detainees has been committed by the ANSP as well as the Military Security Command. The proposed reforms would be an important step toward ensuring that criminal investigations are conducted only by civilian authorities responsible to the public.

Several political parties have stated recently their intention to draft legislation limiting the role of the Agency for National Security Planning (ANSP). According to a *Korea Times* report of July 19,* the opposition would limit the ANSP's official role to collecting information on anti-espionage activities and overseas trends. The ruling Democratic Justice Party has also indicated that it hopes to

revise the law. According to the Yonhap News Agency, a DJP source indicated in July that the revision would limit the agency's functions to activities related to the collection of information on North Korea and overseas developments. The source also is reported to have said that, in view of strong demands from the opposition, the ruling party has agreed to put a new clause in the Act to bar the agency from domestic political surveillance.**

* The current National Security Planning Act allows the ANSP to investigate criminal offences under the National Security Law as well as crimes of insurrection.

** "South Korea: Human Rights Developments January-March 1988," AI Index: ASA 25/07/88 April 1988.

*** Id.

B. Judicial Independence

Prior to June 29, 1987, independent action by South Korean judges was circumscribed. Last year's constitutional amendments, which followed Roh Tae-woo's June 29 call for democratization, offered the prospect of increased judicial independence. Judges have tested the depths of their independence in some cases; yet many respected lawyers and other observers indicated to us that the process of creating an independent judiciary has been a slow one.

The previous system of judicial appointment required the consent of the National Assembly — which itself was dominated by the ruling party during the Chun government ~ only for the appointment of the Chief Justice of the Supreme Court; all other justices and judges were appointed by the President or the Chief Justice without parliamentary consent. This process increased the tendency of judges to serve the interests of the executive branch rather than the interests of justice. *

* Reprinted in FBIS-EAS-88-140, July 21, 1988.

** Yonhap dispatch, reprinted in FBIS-EAS-88-135, July 14, 1988; sfifi_alSQ The Korea Herald. July 15, 1988.

The new Constitution lays the foundation for greater judicial independence by providing for greater oversight of judicial appointments by the National Assembly, which now may withhold its consent to the President's choice of all Justices to the Supreme Court.** The National Assembly has already indicated that it takes seriously its role in the judicial selection process. In June 1988, the National Assembly rejected President Roh's nominee for Chief Justice, Chung Ki-seung, handing President Roh his first major defeat in the National Assembly. The vote against Chung by members of the three opposition parties as well as members of the government party came shortly after a petition drive by 102 lower court judges. The judges' demands included resignation of then-Chief Justice Kim Yong-chul and an end to involvement in judicial decisions by the executive branch and intelligence agency. On June 17, Kim Yongchul resigned; the next day, 335 more judges joined the petition campaign. After the National Assembly rejected President Roh's first nominee to replace Kim, President Roh consulted with the leaders of all parties. On July 5, the National Assembly accepted President Roh's new nominee, Lee Il-kyu, by a vote of 275 to 4.*

* For **it** more complete discussion of the lack of judicial independence under the 1980 Constitution, see A Stern, *Steady Crackdown* at 109-113.

** Constitution of the Republic of Korea (1987), Article 104.

There are some indications that judges have begun to take advantage of the new climate to protect the rights of persons in political cases. For example, on July 12, 1988, the daily *Dong-A Ilbo* reported that a judge refused to issue an arrest warrant for a student sought by the police under the National Security Law.

Similarly, the judiciary appears to have displayed independence in reviewing the activities of student leader Woo Sang-ho. Woo previously had been prosecuted for defaming the state as a result of remarks published in *The New York Times* on August 2, 1987; he received a four-year prison term but was released after serving only a small portion of his sentence.** Woo was then detained on a separate charge of violating the Law on Assembly and Demonstration during a protest over the presidential election campaign. Under past judicial practices, Woo's extensive "record" would probably have led the court to impose a sentence of several years' imprisonment. Instead, the court reportedly released Woo on probation this past summer.

Appellate courts in the past have reduced sentences imposed by lower courts, but they have dismissed charges in political cases only very infrequently. However, appellate courts recently dismissed two long-standing cases with political overtones. On May 27, 1988, a three-member panel of the Seoul Appellate Court found Park Hyong-gyu, a leading dissident clergyman, not guilty of the charge of plotting a rebellion 15 years earlier. Rev. Park had been sentenced in 1973 to two years' imprisonment for statements he had made during an Easter prayer meeting that year. Rev. Park had been released on bail two days after his sentencing, but the charges had never been dropped.* Similarly, on March 5, 1988, a different panel of the Seoul Appellate Court acquitted Kang Sin-ok of a charge of defaming the court with remarks he made in court while defending political offenders 14 years ago. Kang had been sentenced to 10 years' imprisonment by two lower courts, and had been released in 1975 pending his appeal. In reversing the conviction, the court apparently stressed a lawyer's right to defend freely suspects in court proceedings.**

* For a description of the judges' petition campaign, the resignation of Chief Justice Kim Yong-chul, the rejection of Chief Justice-nominee Chung Ki-scung, and the acceptance of nominee Lee Il-kyu, see North American Coalition for Human Rights in Korea, *Biweekly Report*. Vol. VIII, No. 11-12 (July 19, 1988).

** A complete discussion of Woo's prosecution for defaming the state is contained in *Freedom of Repression in the Republic of Korea* (August 1988).

Our discussions in South Korea in July and August 1988 suggested that these examples of judicial independence are noteworthy because they were still rather unusual. While representatives of the Korean Bar Association told Asia Watch that judges frequently refuse to issue arrest warrants, one lawyer who represents many political detainees indicated that, at least in political cases, it is very unusual for judges to refuse to issue arrest warrants. In addition, there are indications that judicial independence is still restricted in circumstances involving senior

government officials, even in cases that have attracted great publicity and public outrage.

In this respect, we return to the cases of Mun Kwi-dong, accused of sexually abusing labor activist Kwon In-suk, and Kang Min-chang, accused of attempting to cover up the death by torture of student Park Chong-chol. With respect to the trial of Mun Kwi-dong, lawyers and human rights activists complained to Asia Watch about certain courtroom rulings. Kwon's lawyer did stress several positive aspects of the trial, including the fact that it took place at all and that it provided the first forum in which the government accepted as true Kwon's allegations of sexual assault. The lawyer expressed concern, however, about the court's refusal to call as witnesses high-ranking government officials who, according to a May 9, 1988 article in the *Dong-A Ubo*, reportedly participated in a meeting where they decided to alter the conclusions of the original investigation into the incident.*

* The Korea Herald, May 28, 1988.

** The Korea Herald, March 5, 1988.

The judiciary appeared to exhibit reluctance to mete out very stern punishments to policemen and their superiors in the trials of those charged in connection with concealing the death by torture in January 1987 of student Park Chong-chol. Park suffocated on January 14, 1987, when his throat was crushed against the edge of a tub of water into which his head was repeatedly submerged by government interrogators. An autopsy of Park's body, conducted before it was hurriedly cremated, found numerous burns and abrasions, which human rights activists and opposition figures as

* Lawyers and human rights activists similarly complained of the court's sentence of five years' imprisonment and three years' suspension of civil rights, **handed** down on July 23, 1968. The special prosecutors had requested the maximum sentence of 15 years' imprisonment, and these observers argued that convicted rapists usually receive much heavier sentences in South Korea. Kwon stated that she planned to appeal Mun Kwi-dong's sentence, and would pursue the facts underlying the alleged cover-up of this incident in her civil suit seeking compensation. (The Korea Herald. June 8, 1988.)

ASSESSING REFORM IN SOUTH KOREA

In this update to the 1987 study on human rights and legal process in South Korea, Asia Watch calls upon the South Korean government to strengthen its commitment to human rights. The government of South Korea has recently agreed to reforms that augur well for the improved observance of human rights, particularly involving judicial review of the constitutionality of laws and the rights of detainees.

However, the report documents the continued imprisonment of several hundred political prisoners and asserts that many South Koreans are imprisoned for the peaceful expression of their views. Asia Watch also criticizes the ambiguous standards the government has used in determining who will be released in government amnesties, and states that these standards have permitted the continued imprisonment of peaceful political activists.

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