

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

Research Response Number: KOR34605
Country: South Korea
Date: 2 April 2009

Keywords: South Korea – Travel to North Korea – National Security Law

This response was prepared by the Research & Information Services Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. This research response may not, under any circumstance, be cited in a decision or any other document. Anyone wishing to use this information may only cite the primary source material contained herein.

Questions

1. What actions, if any, would the South Korean government now take against a person for visiting North Korea prior to 1997, when it was illegal?

RESPONSE

1. What actions, if any, would the South Korean government now take against a person for visiting North Korea prior to 1997, when it was illegal?

No information was found in the sources consulted regarding how the South Korean government would treat an individual now who had traveled without government approval to North Korea prior to 1997. Information from the sources consulted indicates that travel from South to North Korea may in some circumstances be grounds for imprisonment under Article 6 of the *National Security Law*. Reports dated prior to 2005 indicate incidences in which South Koreans have been arrested for unauthorised travel to North Korea under the *National Security Law*. However, no reports for the period of 2006 to 2009 were found in the sources consulted which report the arrest or prosecution of individuals who have traveled to North Korea without government authorisation. Recent reports from the US Department of State (USDOS) and Amnesty International indicate that the South Korean authorities have broad powers under the *National Security Law* to arrest and imprison individuals deemed to be a threat to state security ('S Korea's National Security Law' (undated), Pan Korean Alliance for Reunification website <http://www.bommin.net/eng/eng061.htm> – Accessed 1 April 2009 – Attachment 1; Soon, P.W. 2004, 'National Security and Constitutional Rights in Korea, National Security Law, Past and Present', Demetrius at The Australian National University website, 12 July http://dspace.anu.edu.au/bitstream/1885/42061/1/won_soon.pdf – Accessed 1 April 2009 – Attachment 2; US Department of State 2005, *Country Reports on Human Rights Practices 2004 – Korea*, 28 February, Section 2.d – Attachment 3; 'S. Koreans to be

prosecuted for traveling to North' 1999, B Net website, source: *Kyodo News International*, 20 September

http://findarticles.com/p/articles/mi_m0wdq/is_1999_sept_20/ai_55895445/pg_2/?tag=content:coll – Accessed 1 April 2009 – Attachment 4; Amnesty International 2008, *South Korea: Repeal or fundamentally reform the National Security Law*, 28 November
<http://www.amnesty.org/en/library/info/ASA25/011/2008/en> – Accessed 2 April 2009 – Attachment 5; US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Korea*, 25 February, Section 2.d – Attachment 6).

An undated, unofficial translation of the South Korean *National Security Law* was located on the website of the Pan Korean Alliance for Reunification (PKAR). A more authoritative English language version of the *National Security Law* was not found in the sources consulted. Please note that the translation by the PKAR states that “this is an unofficial translation of the *National Security Law*... The readers are forewarned that this English version is neither an accurate nor a legal representation of the Law”. The PKAR provide the following translation of Article 6 of the *National Security Law* which suggests that travel to “an area controlled by anti state groups”, such as North Korea, may in some circumstances be illegal and punishable by imprisonment:

Article 6: Infiltration And Escape

Up to 10 years in prison for those escape to or infiltrate from an area controlled by anti-state groups being aware that such acts will endanger the national security and the democratic freedom of the society. (Revised 91.5.31).

Death, life or minimum 5 years imprisonment for those who escape to or infiltrate in order to receive from, discuss with or execute anti-state acts for anti-state groups.

Dropped (91.5.31)

All [1] and [2] crimes will be punished. (Revised 91.5.31).

Up to 7 years imprisonment for those who plan or plot acts as defined in [1].

Minimum 2 years imprisonment for those who plan or plot acts as defined in [2] (Revised 91.5.31) ('S Korea's National Security Law' (undated), Pan Korean Alliance for Reunification website <http://www.bommin.net/eng/eng061.htm> – Accessed 1 April 2009 – Attachment 1).

A 2004 article titled 'National Security and Constitutional Rights in Korea', located on an Australian National University digital repository website, provides further information on Article 6 of the *National Security Law*. According to the report Article 6 of the *National Security Law* stipulates that travel between South and North Korea can be grounds for arrest and imprisonment. The report states that:

Article 6 articulates that “anyone who infiltrating into the Republic of Korea from an area controlled by an Anti-State Organization, or escaping to such area, with the knowledge that it endangered national security or survival or the basic liberal democratic order” shall be punished with imprisonment for up to ten years. This article, which punishes simple movement between South and North Korea under the name of ‘infiltration and escape’ violates Article 12, paragraph 2 of the Covenant, which guarantees the freedom to leave any country including his own, and Article, paragraph 4 of the Covenant, which also guarantees the right not be deprived of the right to enter his own country (Soon, P.W. 2004, ‘National

Security and Constitutional Rights in Korea, National Security Law, Past and Present', Demetrius at The Australian National University website, 12 July http://dspace.anu.edu.au/bitstream/1885/42061/1/won_soon.pdf – Accessed 1 April 2009 – Attachment 2).

The following reports from the period of 1989 to 2005 describe the arrest of South Koreans for unauthorised travel to North Korea:

- The USDOS *Country Reports on Human Rights Practices 2004 – Korea*, published in February 2005, states that “travellers to North Korea who did not receive government permission were subject to arrest upon their return. There was one such case during the year” (US Department of State 2005, *Country Reports on Human Rights Practices 2004 – Korea*, 28 February, Section 2.d – Attachment 3).
- On 20 September 1999, *Kyodo News International* reported that “South Korean intelligence authorities asked prosecutors [on] Friday to indict six South Koreans on suspicion of unauthorized travel to North Korea in June and August”. The report states that five of the South Koreans were suspected of “entering North Korea in early August via Beijing and of supporting North Korea’s anti-South propaganda”. According to the report “upon their return home from North Korea, South Korean investigators questioned them for allegedly violating the *National Security Law*” (‘S. Koreans to be prosecuted for traveling to North’ 1999, B Net website, source: *Kyodo News International*, 20 September http://findarticles.com/p/articles/mi_m0wdq/is_1999_sept_20/ai_55895445/pg_2/?tag=content:coll – Accessed 1 April 2009 – Attachment 4).
- On 30 April 1998 Amnesty International published a report on South Korea titled *Long term prisoners still held under the National Security Law*. The report states that some of the South Korean political prisoners with long sentences had been charged under Article 6 of the *National Security Law* “which prohibits unauthorised travel to North Korea” (Amnesty International 1998, *Long term prisoners still held under the National Security Law*, 30 April, p.3 <http://www.amnesty.org/en/library/info/asa25/015/1998/en> – Accessed 1 April 2009 – Attachment 7).
- A 1989 Human Rights Watch report on South Korea reports that a South Korean dissident was arrested and charged under the *National Security Law* after travelling to North Korea without gaining government authorisation. The report states that “the authorities continued to see unsanctioned travel to North Korea as “anti-state” activity punishable by long prison terms (Human Rights Watch 1989, *World Report – South Korea (Republic of Korea)*, December <http://www.hrw.org/legacy/reports/1989/wr89/southkor.htm#topofpage> – Accessed 1 April 2009 – Attachment 8).

The USDOS Country Reports on Human Rights Practices for Korea for the years of 2005 to 2008 (the most recent report) do not state that individuals have been arrested or punished for unauthorised travel to North Korea. The USDOS *Country Reports on Human Rights Practices 2005 – Korea*, reports that “unlike in previous years, there were no cases of travellers to North Korea being subjected to arrest for not obtaining government permission prior to their departure”. No other reports for the period of 2006 to 2009 were found in the sources consulted which indicate the arrest or punishment of individuals for unapproved

travel to North Korea (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – Korea*, 8 March – Attachment 9; US Department of State 2007, *Country Reports on Human Rights Practices 2006 – Korea*, 6 March – Attachment 10; US Department of State 2008, *Country Reports on Human Rights Practices 2007 – Korea*, 11 March – Attachment 11; US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Korea*, 25 February – Attachment 6).

Information on the immigration regulations for South Korean nationals traveling to North Korea was found on the ‘Hi Korea’ website. The Hi Korea website describes itself as an “e-Government website for foreigners”. The website states that Koreans must obtain a “visitation verification certificate” which has been “issued by the Minister of National Unification” in order enter North Korea. The website does not, however, provide any information as to the penalties for unauthorised travel. The following information describes the procedures for nationals travelling between South and North Korea:

Nationals of either Korea seeking to visit the other must submit the following documents to the Immigration Officer at the immigration port and go through immigration inspection.

- Visitation verification certificate (North/South Korea visitation verification certificate) Issued by the Minister of National Unification
- Departure card composed by visitor him/herself (‘Travel between North & South Korea’ 2008, Hi Korea website http://www.hikorea.go.kr/pt/infodetailr_en.pt & http://www.hikorea.go.kr/pt/infodetailr_en.pt?categoryid=2&parentid=384&catseq=&showmenuid=375 – Accessed 31 March 2009 – Attachment 12).

On 28 November 2008 Amnesty International released a public statement criticising the South Korean *National Security Law*. The statement reports that the *National Security Law* has often been used in an arbitrary manner which has denied individuals their rights to freedom of expression and association. The following is an excerpt of the statement by Amnesty International:

With 1 December marking the 60th anniversary of South Korea’s National Security Law (NSL), Amnesty International again calls for the law to be repealed or fundamentally reformed.

The organization said that the National Security Law continues to be used as a tool to silence dissent and to prosecute individuals who are peacefully exercising their human rights to freedom of expression and association.

...The NSL, which has been in force since 1 December 1948, has been used throughout the years to harass and punish people for non-violent political activities. The law provides long sentences or the death penalty for “anti-state” and “espionage” activities but these offences are not clearly defined and have often been used arbitrarily against people whose only crime is to exercise their human rights to freedom of expression and association. Most arrests in recent years have been made under Article 7 of the law that provides sentences of up to seven years’ imprisonment for “praising” and “benefiting” the “enemy” (generally meaning North Korea).

The NSL is applied in an arbitrary fashion – while certain political works are permitted for academic study, possession or reference to the same works by students or activists with perceived “pro-North Korean” leanings has often been treated as a criminal offence.

Some people have been arrested merely for discussing reunification with North Korea, publishing socialist or “pro-North Korean” material or having views which are considered to

be similar to those of the North Korean Government (Amnesty International 2008, *South Korea: Repeal or fundamentally reform the National Security Law*, 28 November <http://www.amnesty.org/en/library/info/asa25/011/2008/en> – Accessed 2 April 2009 – Attachment 5).

The USDOS *Country Reports on Human Rights Practices 2008 – Korea* provides the following information on the arrest and detention of individuals under the *National Security Law*:

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions. However, the National Security Law (NSL) grants the authorities broad powers to detain, arrest, and imprison persons who commit acts the government views as intended to endanger the “security of the state.” Critics continued to call for reform or abolishment of the law, contending that its provisions did not define prohibited activity clearly. The Ministry of Justice (MOJ) maintained that the courts had established legal precedents for strict interpretation of the law that preclude arbitrary application. The number of NSL investigations and arrests has dropped significantly in recent years.

During the year authorities arrested 16 persons and prosecuted another 27 persons for alleged NSL violations. Of those prosecuted, four were found guilty; the remaining 23 were on trial as of year’s end (US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Korea*, 25 February, Section 1.d – Attachment 6).

South Korean citizens may be refused a passport due to involvement in North Korean affairs. The USDOS *Country Reports on Human Rights Practices 2008 – Korea*, states that some defectors have been denied passports but that the South Korean government does not employ the “forced exile of its citizens”. The report states that:

Most citizens could move freely throughout the country; however, government officials restricted the movement of certain DPRK [Democratic People's Republic of Korea] defectors by denying them passports. In January the Supreme Court ruled that the denial of a passport to one defector was “unjust.” While foreign travel generally was unrestricted, the government must approve travel to the DPRK. In many cases travelers going to the DPRK must receive a briefing from the Ministry of Unification prior to departure. They must demonstrate also that their trip does not have a political purpose and is not undertaken to praise the DPRK or criticize the government.

...The law does not include provisions for forced exile of its citizens, and the government did not employ it (US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Korea*, 25 February, Section 2.d – Attachment 6).

List of Sources Consulted

Internet Sources:

Government Information & Reports

Immigration & Refugee Board of Canada <http://www.irb.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk>

US Department of State <http://www.state.gov/>

US Department of State website <http://www.state.gov>

United Nations (UN)

UNHCR <http://www.unhcr.ch/>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org/>
Freedom House <http://www.freedomhouse.org/template.cfm?page=1>
Human Rights Watch <http://www.hrw.org/>
International Helsinki Federation for Human Rights <http://www.ihf-hr.org/welcome.php>
Human Rights Internet (HRI) website <http://www.hri.ca>

International News & Politics

BBC News website <http://news.bbc.co.uk/>
B Net website <http://findarticles.com/>
Demetrius at The Australian National University website <http://dspace.anu.edu.au/>

Region Specific Links

Hi Korea website <http://www.hikorea.go.kr/pt/index.html>
Korean National Police Agency <http://www.police.go.kr/eng/index.jsp>
Pan Korean Alliance for Reunification website <http://www.bommin.net/>

Search Engines

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)
BACIS (DIAC Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue

List of Attachments

1. 'S Korea's National Security Law' (undated), Pan Korean Alliance for Reunification website <http://www.bommin.net/eng/eng061.htm> – Accessed 1 April 2009.
2. Soon, P.W. 2004, 'National Security and Constitutional Rights in Korea, National Security Law, Past and Present', Demetrius at The Australian National University website, 12 July http://dspace.anu.edu.au/bitstream/1885/42061/1/won_soon.pdf – Accessed 1 April 2009.
3. US Department of State 2005, *Country Reports on Human Rights Practices 2004 – Korea*, 28 February.
4. 'S. Koreans to be prosecuted for traveling to North' 1999, B Net website, source: *Kyodo News International*, 20 September http://findarticles.com/p/articles/mi_m0wdq/is_1999_sept_20/ai_55895445/pg_2/?tag=content;coll – Accessed 1 April 2009.
5. Amnesty International 2008, *South Korea: Repeal or fundamentally reform the National Security Law*, 28 November <http://www.amnesty.org/en/library/info/ASA25/011/2008/en> – Accessed 2 April 2009.
6. US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Korea*, 25 February.

7. Amnesty International 1998, *Long term prisoners still held under the National Security Law*, 30 April <http://www.amnesty.org/en/library/info/asa25/015/1998/en> – Accessed 1 April 2009.
8. Human Rights Watch 1989, *World Report – South Korea (Republic of Korea)*, December <http://www.hrw.org/legacy/reports/1989/wr89/southkor.htm#topofpage> – Accessed 1 April 2009.
9. US Department of State 2006, *Country Reports on Human Rights Practices 2005 – Korea*, 8 March.
10. US Department of State 2007, *Country Reports on Human Rights Practices 2006 – Korea*, 6 March.
11. US Department of State 2008, *Country Reports on Human Rights Practices 2007 – Korea*, 11 March.
12. ‘Travel between North & South Korea’ 2008, Hi Korea website http://www.hikorea.go.kr/pt/infodetailr_en.pt & http://www.hikorea.go.kr/pt/infodetailr_en.pt?categoryid=2&parentid=384&catseq=&shomenuid=375 – Accessed 31 March 2009.