

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

Research Response Number: KOR31657
Country: South Korea
Date: 17 April 2007

Keywords: South Korea – Suspected North Korean spies – State Protection - National Security Law

This response was prepared by the Country Research 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.

Questions

- 1. What action, if any, do the authorities take against suspected North Korean spies?**
- 2. Do citizens of South Korea have access to meaningful protection by the state and can suspected spies defend themselves against these accusations?**

RESPONSE

- 1. What action, if any, do the authorities take against suspected North Korean spies?**

According to the most recent US Department of State *Country Reports on Human Rights Practices*, Korea's National Security Law (NSL) defines espionage in broad terms and permits the authorities to detain and arrest persons who commit acts viewed as supporting North Korea and endangering the security of the state. According to this report the authorities arrested 11 persons for alleged NSL violations between January and September 2006. The report states:

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions. However, **rules regarding arrest and detention under the National Security Law (NSL) are vague.** For example, the NSL defines espionage in broad terms and permits the authorities to detain and arrest persons who commit acts viewed as supporting North Korea and therefore deemed dangerous to the country. **The NSL permits the imprisonment for up to seven years of anyone who “with the knowledge that he might endanger the existence or security of the state or the basic order of free democracy, praised, encouraged, propagandized for, or sided with the activities of an antistate organization.”** **The legal standard for what constitutes “endangering the security of the State” is vague.** Thus, persons could be arrested for the peaceful expression of views that the government considered pro-North Korean or antistate. Between January and September authorities arrested 11 persons for alleged NSL violations.

The UN Human Rights Committee has termed the NSL “a major obstacle to the full realization of the rights enshrined in the International Covenant on Civil and Political Rights.” Proposals to annul or substantially revise the NSL were sparked again during the year after a teachers’ union published a pamphlet using text from a North Korean state document. A university professor who was arrested under the NSL late last year for publishing unpopular columns about the Korean War was subsequently found guilty of violating the NSL and was dismissed from his job. In May he was sentenced to two years of prison with a stay of execution of three years. At year’s end the case was under appeal (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Republic of Korea*, March, Section 1.d – Attachment 1).

In October 2006, five people were detained for links to an alleged North Korean spy ring. An article dated 3 November 2006 in *The Korea Herald* states that “[u]nder the law, people who are suspected of violating South Korea’s tough anticommunist National Security Law can be detained at either the NIS [National Intelligence Service] or the prosecutors’ office for up to 50 days with the approval of the court” (Bang, Annie I. 2006, ‘Spy suspects face extended detention’, *The Korea Herald*, 3 November – Attachment 2; ‘Ilsimhoe Case Handed Over to Prosecutors’ 2006, *Dong-A Ilbo Daily*, 11 November – Attachment 3).

Recent news articles from the South Korean media, reporting Justice Ministry statistics, state that arrests under the NSL have increased for the first time in ten years. An article dated 8 November 2006 states that critics of the NSL claim that “the law provides long prison terms and even the death penalty for ‘anti-state’ and ‘espionage’ activities, but these terms are vaguely-defined and have been used to imprison people unfairly. However, there is a possibility that the recent eruption of the spying scandal could add weight to conservative voices calling for a stronger implementation of the anti-communist law” (‘Use of National Security Law Increases’ 2006, *The Hankyoreh*, 30 October http://english.hani.co.kr/arti/english_edition/e_national/168207.html – Accessed 16 November 2006 – Attachment 4; Kim, Tong-hyung 2006, ‘Security Law Arrests Increase’, *Korea Times*, 29 October <http://times.hankooki.com/lpage/nation/200610/kt2006102919063010510.htm> – Accessed 8 November 2006 – Attachment 5).

North Korean agents in South Korea

To contextualise the security laws and treatment of suspected spies this section provides information on the number and activities of North Korean agents in South Korea.

A US government report on North Korean provocations from 1950 to 2003 indicates that agents from North Korea have been very active in South Korea. It shows that:

- a number of South Koreans have been killed in South Korea by agents from North Korea (in 1978, 1984 and 1986);
- a number of agents from North Korea have been captured in South Korea (including a ring of 400 agents in 1992 and others in 1995 and 1997);
- a number of agents from North Korea have been killed trying to infiltrate South Korea. (between 1968 and 2002) (Nanto, Dick K. 2003, *North Korea: Chronology of Provocations, 1950 – 2000*, CRS Report for Congress, Updated 18 March – <http://fpc.state.gov/documents/organization/19435.pdf> -accessed 24 January 2005, pp. 4-22 – Attachment 6).

No definitive account of the number of North Korean agents in South Korea was found, though there are thought to be many. The South Korean intelligence agency gave an estimate of 40,000 in the early 1990s, but according to the *Washington Times*, there was much scepticism about this figure. In 1997 a high profile defector, Hwang Jang-yop, claimed there were 50,000 North Korean spies in South Korea. However, an unnamed government official, speaking to *The New York Times* in 1997, stated that most of these were sympathisers, mainly students, rather than true spies and that “monitored radio transmissions to and from North Korea indicate that there are several hundred active North Korean agents [in South Korea]” (Breen, Michael 1992, ‘Seoul misses top N. Korean agent But smashes one of largest rings’, *The Washington Times*, 8 October – Attachment 7; Moon Ihlwan 1997, ‘Defector’s comments stir fears in S.Korea’, *Reuters*, 14 February – Attachment 8; Burton, John, 1997, ‘Attack On Defector Was ‘Revenge’’, *Financial Times*, 17 February – Attachment 9; Pollack, Andrew 1997, ‘S. Korean law to aid spy-catching raises fear of political repression’, *The New York Times*, 2 March – Attachment 10).

A 2004 news report states that “[d]espite a secret pact to stop subversive activities directed against each other, North Korean agents in South Korea are apparently busier than ever” (‘South Korea – North Korea Boosts Espionage Activity’ 2004, *Periscope Daily Defense News Capsules*, 19 October – Attachment 11).

Recent developments

The October 2006 testing of a nuclear bomb by North Korea has led to somewhat heightened tensions between the North and the South and an increase in support for, and implementation of, security measures in South Korea. A crackdown on suspected espionage activities is taking place as a result. As stated previously, according to South Korean news articles, arrests under the NSL increased in 2006 for the first time in ten years. North Korea has also recently repeatedly urged South Korea to repeal the National Security Law, a call which is likely to have the opposite effect (‘Use of National Security Law Increases’ 2006, *The Hankyoreh*, 30 October http://english.hani.co.kr/arti/english_edition/e_national/168207.html – Accessed 16 November 2006 – Attachment 4; ‘South Urges North to Stop Interfering In Presidential Election’ 2007, *Dong-A Ilbo Daily*, 1 March – Attachment 12; ‘North Korea says “malicious” South security law blocking peaceful reunification’ 2007, *BBC News*, 20 February – Attachment 13).

The arrests and subsequent convictions of a number of suspected spies, some quite high-profile (including a senior official of the Democratic Labor Party (DLP)), have made the issue of espionage front page news over recent months in South Korea. An article dated 27 October 2006 details the initial arrest and investigations into the case and mentions that the probe comes amid rising tension between the two Koreas following Pyongyang’s testing of a nuclear bomb. The suspects strongly denied the accusations, and a spokesperson for the DLP noted that “[t]his case suddenly appeared when relations between the two Koreas soured following North Korea’s nuclear test” (Tong-hyung, K. 2006, ‘Seoul Cracks Down on Spies’, *Korea Times*, 27 October – Attachment 14; see also: Achin, K. 2006, ‘South Korea charges five, including American, with spying for North’, *US Fed News*, 8 December – Attachment 15; ‘South Korea charges five with spying for North’ 2006, *Reuters News*, 8 December – Attachment 16).

In April 2007 one South Korean man was sentenced to two and a half years for spying for North Korea, while a US citizen of South Korean origin was sentenced to nine years in prison (‘South Korean jailed for two years for “spying for North Korea”’ 2007, *BBC News*, 5 April – Attachment 17; ‘US man gets nine years for NKorea spying’ 2007, *Agence France-Presse*,

16 April – Attachment 18; see also ‘NRC Spokesman on Case of “Single-minded Association” in S. Korea’ 2007, *Korean News*, 2 April – Attachment 19).

Other recent news articles detail further arrests under the NSL:

- In February 2007 a sixth person was placed under formal arrest on charges of spying for North Korea. The suspect was under questioning for three days before a judge issued a formal arrest warrant (‘South Korea arrests political aide on spying charges’ 2007, *BBC News*, 3 February – Attachment 20).
- In January 2007 two teachers were arrested on charges of violating the National Security Law (‘Teacher Held Over Pro-N.Korean Class Materials’ 2007, *Chosun Ilbo*, 23 January – Attachment 21).
- In December 2006, “[a]nother espionage case was disposed of...by the Seoul Central District Court, which sentenced a man to 10 years in prison for violations of the National Security Law” (Dong-ky, M. 2006, ‘Photographs lead to a 10-year prison sentence’, *Joins.com*, 8 December – Attachment 22).

Further relevant information is included in:

- RRT *Research Response* dated 21 November 2006 provides information on prosecutions under the NSL since 2002, as well as the current status of these laws (RRT Country Research 2006, *Research Response KOR30914*, 21 November – Attachment 23).
- RRT *Research Response* dated 6 November 2006 provides information on the powers of the National Intelligence Service (NIS) and the Korean National Police Agency (KNPA), as well as information on political tensions between North and South Korea following Pyongyang’s nuclear test (RRT Country Research 2006, *Research Response KOR30832*, 6 November – Attachment 24).

2. Do citizens of South Korea have access to meaningful protection by the state and can suspected spies defend themselves against these accusations?

The available information indicates that citizens of South Korea generally do have access to meaningful state protection. However, the security laws which cover espionage are vague and are often applied arbitrarily and security law enforcement agencies, such as the National Intelligence Service (NIS), have wide powers. Of particular concern is the practice of detaining suspects without a warrant, and allowing the suspect to be questioned for a number of days before a formal arrest warrant is issued. As detailed in the previous question, there is currently a widespread crackdown on suspected espionage activity leading some critics to claim that a “witch-hunt” is occurring (‘Abolition of NSL Demanded in S. Korea’ 2006, *Korean News*, 13 December – Attachment 25; Rahn, K. 2006, ‘Probe Into Spy Case to Be Extended’, *Korea Times*, 3 November – Attachment 26).

According to Dr Jon Moran, a Senior Lecturer in Criminology, the NIS is separate from both the military and the police, and “where the agency and police conflict, the agency has priority. There are few agreed standards for results or compliance with law or policy” (Moran, Jon 2003, ‘Making Intelligence Accountable: Legislative and Executive Oversight in Old and New Democracies: South Korea’s National Intelligence Service’, Paper prepared for

the Workshop on “Making Intelligence Accountable”, September, p. 15
http://www.dcaf.ch/legal_wg/ev_oslo_030919_moran.pdf – Accessed 2 November 2006 – Attachment 27)

In October 2004 Amnesty International (AI) wrote that the “NSL is currently applied in an arbitrary fashion”. However, Amnesty goes on to further state that:

The organization has since witnessed positive developments as several amnesties have reduced the number of people imprisoned under the NSL. Most of those arrested under the NSL in recent years have been tried within six months of arrest and either released or given a short prison sentence, but some have been given heavy sentences. As of August 2004, at least 11 prisoners were reportedly being held under the NSL (Khan, Irene 2004, *Republic of Korea (South Korea): Open Letter to all Leaders of Political Parties: An Important Duty to Revitalise Efforts to Fundamentally Repeal or Review the National Security Law*, 13 October, ASA 25/009/2004
<http://web.amnesty.org/library/Index/ENGASA250092004?open&of=ENG-KOR> – Accessed 9 November 2006 – Attachment 28).

A 2002 report by Amnesty International states that “[c]riminal suspects and prisoners have continued to face ill-treatment by law enforcement officials.” Regarding arrests made under the NSL, Amnesty claims that the practice of detaining suspects without a warrant has led to a pattern of abuse. Most arrests are 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). In July 2002 an office-worker named Kim Kang-phil was visited by ten officers from the NIS and arrested without a warrant. In September, the Seoul District Court handed him a one-year prison sentence and a one-year suspended sentence. This Amnesty report further states that:

There is still a pattern of abuse in which suspects are detained without an arrest warrant and are not allowed prompt communication with their family. This results in many detainees being held incommunicado after their arrest, when they are vulnerable to police ill-treatment. Detainees may be held for up to 30 days’ questioning by police and prosecution officials before indictment. Under some provisions of the National Security Law this may be extended to 50 days. Amnesty International believes this long period of detention for interrogation purposes facilitates the use of ill-treatment to extract confessions (Amnesty International 2002, *Republic of Korea (South Korea) Summary of Concerns and Recommendations to Candidates for the Presidential Elections in December 2002*, AI Index: ASA 25/007/2002, 6 November, pp. 3-11 – Attachment 29).

The 2006 Freedom House country report on South Korea states that:

South Korea’s judiciary is generally considered to be independent, and the U.S. State Department report declared that it is “becoming increasingly so in practice.” There is no trial by jury; judges render verdicts in all cases. The National Police Administration, under the Ministry of Government Administration and Home Affairs, is occasionally responsible for human rights abuses such as verbal and physical abuse of detainees. The police administration is generally considered well-disciplined and uncorrupt.

Laws concerning detention are often vague. Of particular concern is the broadly drafted NSL, which authorizes the arrest of South Koreans accused of espionage or of supporting North Korea in general. The interpretation of this law means that people can be arrested for making positive remarks about North Korea, although these arrests are the subject of considerable dispute. In August 2004, the Constitutional Court ruled that the law did not excessively restrict human rights, but in October, the ruling Uri Party introduced legislation to loosen or

scrap the law, offering the country alternatives ranging from revisions of the existing law to the drafting of an entirely new law. The move was part of the government's broader reform drive, but thousands of people rallied in protest, asserting that the law in its current form was still a necessary safeguard against security threats from North Korea (Freedom House 2006, *Freedom in the World – South Korea (2006)* – Attachment 30).

General procedures covering arrests, detention, and trials

Regarding arrests and detention, the most recent US Department of State country report on human rights practices in South Korea states that:

The law requires warrants in cases of arrest, detention, seizure, or search, except if a person is apprehended while committing a criminal act or if a judge is not available and the authorities believe that a suspect may destroy evidence or escape capture if not quickly arrested. In such cases, judges must issue arrest warrants within 48 hours after the suspect is apprehended, or within 72 hours if a court is not located in the same county. Police may detain suspects who appear voluntarily for questioning for up to six hours but must notify the suspects' families. The police generally respected these requirements.

Authorities generally must release an arrested suspect within 20 days unless an indictment is issued. An additional 10 days of detention is allowed in exceptional circumstances.

There is a bail system, but human rights lawyers said bail generally was not granted for detainees who were charged with committing serious offenses, might attempt to flee or harm a previous victim, or had no fixed address. The law provides for the right to representation by an attorney, including during police interrogation. There were no reports of access to legal counsel being denied (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Republic of Korea*, March, Section 1.d – Attachment 1).

In regards to trial procedures in South Korea, the US Department of State reports that:

Trials are open to the public, but a judge may restrict attendance if he believes spectators might disrupt the proceedings. There is no trial by jury. Court-appointed lawyers are provided by the government (at government expense) in cases where the defendant cannot afford to provide his or her own legal counsel. When a person is detained, the initial trial must be completed within six months of arrest. Judges generally allowed considerable scope for examination of witnesses by both the prosecution and defense. The law provides defendants with a number of rights in criminal trials, including the presumption of innocence, protection against self-incrimination, freedom from retroactive laws and double jeopardy, the right to a speedy trial, and the right of appeal. Although the law prohibits double jeopardy, the courts interpreted this provision to mean that a suspect cannot be indicted or punished more than once for the same crime, while the prosecution can appeal a not-guilty verdict or a sentence it considers excessively lenient. Therefore, a suspect may be tried more than once for the same crime (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Republic of Korea*, March, Section 1.e – Attachment 1).

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Freedom House <http://www.freedomhouse.org>

Databases:

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REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Republic of Korea*, March.
2. Bang, Annie I. 2006, 'Spy suspects face extended detention', *The Korea Herald*, 3 November. (FACTIVA)
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