

THE NATIONAL SECURITY LAW

**CURTAILING FREEDOM OF
EXPRESSION AND
ASSOCIATION IN THE
NAME OF SECURITY IN
THE REPUBLIC OF KOREA**

**AMNESTY
INTERNATIONAL**



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1. INTRODUCTION

This briefing highlights a worrying trend of increased arbitrary use of the National Security Law (NSL) in the Republic of Korea (South Korea) since 2008 by law enforcement authorities that, in the name of security, have undermined citizens' enjoyment of the right to freedom of expression and association.

According to the Supreme Prosecutors' Office¹, the number of new NSL cases increased by 95.6 per cent - from 46 in 2008 to 90 in 2011 - between 2008 and 2011. The number of those charged under the vaguely worded clauses of the NSL rose by 96.8 per cent - from 32 in 2008 to 63 in 2011 – in the same four year period.

The authorities are also using NSL provisions as a tool to control online debate in South Korea on North Korea. According to the Korean National Police Agency, the number of people prosecuted for pro-North Korean online activities increased from 5 in 2008 to 51 as of October 2011 while the number of domestic websites shut down for pro-North Korean content rose from 18 in 2009 to 178 in October 2011.²

The increased use of the vaguely worded clauses of the NSL has arbitrarily targeted individuals and groups perceived to oppose the South Korean government, especially on policies related to North Korea. This has:

- Undermined citizens' right to freedom of expression, opinion and association (See Socialist Workers League, People's Solidarity for Participatory Democracy (PSPD), Capitalism Research Society and Park Jeong-geun cases);
- Unduly restricted the right to academic freedom, the selling or borrowing of books and pursuing critical debate on issues relating to North Korea (See Park Jeong-geun, Capitalism Research Society and Kim Myeong-soo cases);
- Targeted and attacked criticisms of official investigations such as those held into the sinking of the South Korean warship *Cheonan* in the international arena (See PSPD case);
- Been used in a politically motivated manner against those who had visited North Korea with official permission from the previous administrations of Kim Dae-jung and Roh Moo-hyun (See Kim Eun-hye case).

In pursuing these NSL cases the authorities have:

- Convicted people on the basis of evidence collected by the National Intelligence Service (NIS) through means that were judged to be unconstitutional by the Constitutional Court (See *Beomminryeon* case);
- Ill-treated detainees and witnesses and denied detainee's access to relatives when they exercised their right to silence and did not respond to interrogations. (See *Wangjaesan* case).

Amnesty International acknowledges that every government has a right and duty to take

measures to ensure the security of its citizens. The organization also appreciates that South Korea has special security concerns with regard to North Korea. However, security concerns should never be used as an excuse to deny people the right to express different political views and to exercise fundamental human rights including the right to freedom of expression as established in international standards including the International Covenant on Civil and Political Rights (ICCPR).

The South Korean courts have in many cases rejected detention warrants requested by the police and prosecution service and have acquitted some persons charged under provisions of the NSL. There has nonetheless been a worrying increase in the arbitrary use of the NSL and in particular vaguely worded clauses which have long been open to abuse. For example Article 7 of the NSL which stipulates punishment for anyone who “praises, incites or propagates the activities of an anti-government organization...”. Words such as “praise”, “incite” are not defined clearly in the law. This has facilitated the arbitrary use of the article against peaceful government critics or members of organizations that simply hold alternative views to the government on how to approach North Korea.

The abuse of vaguely worded clauses in the NSL, especially Article 7, has caused such concern that UN human rights mechanisms, domestic human rights bodies like the National Human Rights Commission of Korea (NHRCK), Amnesty International and other national and international human rights organizations have all urged the South Korean government to fundamentally review or abolish the NSL.³ Crucially, they have concluded that the restrictions placed on freedom of expression by the NSL do not meet the requirements of Article 19, paragraph 3 of the ICCPR which acknowledges that the exercise of the rights to freedom of expression:

“[C]arries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

Increased resort to investigations, prosecutions and imprisonment under the NSL has led to violations of freedom of expression, opinion and association with restrictions particularly targeted at those civil society organizations and individuals perceived to be critical of the South Korean government’s policies. In some cases, they even targeted individuals who were curious about North Korea and even critical of North Korea. Authorities have used the vaguely worded clauses of the NSL to curtail freedom of association, harassment, social stigma and stress to those targeted in the name of security. These actions constitute violations of safeguards guaranteed by the South Korean Constitution and the country’s international human rights obligations and commitments.

Amnesty International urges the government of South Korea, newly elected members of the National Assembly and all Presidential candidates preparing for the December 2012 elections to commit to:

- Abolish or substantially amend the NSL in line with the country’s international human rights obligations and commitments;

- Immediately and unconditionally release all prisoners of conscience;⁴
- Stop the arbitrary use of the NSL and ensure that freedom of expression, opinion and association are fully respected, protected, promoted and fulfilled;
- Promptly, transparently and effectively investigate all allegations of human rights violations stemming from the abuse of the NSL, bring suspected perpetrators to justice, and provide an effective remedy and redress to victims;
- Fully implement the recommendations made by the UN Human Rights Committee and other UN bodies with regard to the NSL.⁵

1.1 SUMMARY OF BRIEFING AND RESEARCH METHODOLOGY

This briefing includes a summary of cases that highlight Amnesty International's concerns about human rights violations due to increased use of the vaguely worded clauses of the NSL. The next section includes a brief description of the history of the NSL, the position of the key domestic institutions like the Constitutional Court and the NHRCK and the critique of the NSL by international community. The briefing then outlines the procedure adopted by investigative authorities (the police, the NIS and the prosecutors) as they implement the NSL. The briefing next presents official statistics on the increase in the use of the NSL by investigative authorities. More detailed accounts of eight emblematic cases of human rights violations under the NSL are included in an appendix.

In preparing this briefing, between November 2010 and 2012 Amnesty International interviewed individuals who had been investigated, prosecuted and imprisoned under the NSL as well as their relatives and lawyers. Other relevant civil society organizations and legal experts in South Korea were also consulted. The Researcher also attended a court hearing of an NSL case in November 2011. Reference was also made to academic articles, UN documents and previous research by Amnesty International on the NSL.

2. SUMMARY OF CASES THAT HIGHLIGHT AMNESTY INTERNATIONAL'S CONCERNS OF HUMAN RIGHTS VIOLATIONS

THE MOST WIDELY USED NSL CLAUSE⁶

Article 7 of the NSL

(1) "Any person who praises, incites or propagates the activities of an antigovernment organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years:"

(2) Deleted. <by Act No. 4373, May 31, 1991>;

(3) Any person who constitutes or joins an organization aiming at the act as referred to in paragraph (1) shall be punished by imprisonment for a definite term of one or more years;

(4) Any person who is a member of the organization as referred to in paragraph (3), and fabricates or circulates any falsies (sic) fact as to the matters which threaten to provoke any confusion of social order, shall be punished by imprisonment for a definite term of two or more years;

(5) Any person who manufactures, imports, reproduces, holds, carries, distributes, sells or acquires any documents, drawings or other expression materials, with the intention of committing the act as referred to in paragraph (1), (3) or (4), shall be punished by the penalty as referred to in the respective paragraph;

(6) Any person who has attempted the crime as referred to in paragraph (1) or (3) through (5), shall be punished;

(7) Any person who prepares for or plots the crime as referred to in paragraph (3) with the intention of committing it shall be punished by imprisonment for not more than five years.

Amnesty International's concerns on the NSL articulated in 1999 appear relevant still today:

"The National Security Law has been widely misused to detain people who posed no threat to security. South Korean governments have consistently used the law to remove people who pose a threat to established political views, to prevent people from taking part in discussions

surrounding relations with North Korea and as a form of control at times of social unrest.”⁷

- **The NSL has been used by South Korean authorities to undermine the right freedom of association.**

The NSL has been used by South Korean authorities to undermine the right freedom of association. For example, the NSL was used to punish members of the Socialist Workers League established in February 2008 which calls for the establishment of a ‘real socialist state’ and the abolition of the armed forces. In total, the Socialist Workers League has about 70 members. It posted statements advocating a socialist state on the internet. During the candlelight demonstrations against US beef imports in 2008, it published and distributed pamphlets.

The members of the Socialist Workers League were investigated under NSL within six months of its inception. Ironically, the Socialist Workers League is highly critical of North Korea and its reliance on labour exploitation. Initially in August 2008 Socialist Workers League founder Professor Oh Se-chul and six other members were arrested for violating Articles 3 and 7 of the NSL but were released shortly after. Unprecedentedly, between August and October 2008, the Seoul Central District Court twice rejected police requests to issue arrest warrants on the grounds that there was insufficient evidence and the individuals did not represent a substantial threat to the security of the country. However in February 2009, prosecutors again charged Professor Oh and seven other office bearers of the Socialist Workers League with violating NSL Article 7. In February 2011, the Seoul Central District Court found them guilty of violating NSL Article 7(1) “propagating or instigating a rebellion against the State.” This ruling came even though Socialist Workers League members had only used peaceful means to advocate a socialist state and had also been highly critical of the “enemy” - North Korea. On appeal, in December 2011, the Seoul High Court increased the eight members’ sentences to between 18 months to two years in prison and three years suspended.

The use of the NSL to target members of the Socialist Workers League has seriously undermined the effective enjoyment of their freedom of expression, opinion and association and reveals a new trend in which the NSL is applied to an organization which is not perceived as pro-North Korea. (For more details on this case, please refer to the Appendix: Case A-6).

- **The authorities have also used the NSL to attack criticisms of official investigations in the international arena.**

The authorities have also used the NSL to attack criticisms of official investigations in the international arena. The NSL was invoked against a well-known civil society organization, the People’s Solidarity for Participatory Democracy (PSPD) for drafting and sending a letter⁸ in June 2010 to members of the UN Security Council which criticized the official investigation that concluded that North Korea had played a role in sinking the South Korean warship

Cheonan in March 2010. Following complaints by other political groups that the sending of the critical letter to the UN Security Council constituted an “enemy benefiting act”, prosecutors investigated PSPD staff members under suspicion of violating the NSL in June 2010. On 10 August 2011, the Seoul Central District Prosecutors’ Office announced that it had stopped its investigations and dropped NSL charges against the PSPD staff. Though the charges were dropped, the investigation could be perceived, especially by civil society organizations, as harassment of a group attempting through peaceful means to generate scrutiny of the actions of their government by relevant international bodies. The episode revealed the extent of the authorities’ intolerance of criticism, particularly in matters relating to North Korea. By initiating an NSL investigation the authorities sent a strong warning to other groups of the risks of pursuing similar international avenues in future. (For more details on the PSPD case, please refer to the Appendix: Case A-3).

- **The NSL has also been used to curb academic debate on the study of North Korean issues.**

The NSL has also been used to curb academic debate on the study of North Korean issues. Members of the Capitalism Research Society were investigated for breaching the NSL and their first President Choi Ho-hyeon was charged and later found guilty of violating Article 7 of the NSL. The Capitalism Research Society is an academic organization, which organizes events including Alternative Economy Camps for its members to study and discuss alternative economic models. The police considered recommendations adopted at one such camp in January 2008 to be an enemy-benefiting activity. On 21 March 2011, the authorities arrested three men including Choi Ho-hyeon, releasing the other two on 23 March. Police searched the homes of at least 10 members including former Presidents of the group and confiscated materials from the Alternative Economy Camp, computer hard disks and USB devices. The prosecutors reportedly tried to charge the members of the Capitalism Research Society with violating Article 7 of the NSL for constituting an enemy benefiting organization and for carrying enemy benefiting materials. In August 2011, Choi Ho-hyeon was sentenced to two years in prison and three years of suspended sentence for violating Article 7 of the NSL on the charge of carrying enemy benefiting materials and restrictions were imposed on his movement and association. The Capitalism Research Society was one of many academic organisations that work peacefully on issues related to North Korea. Charging Choi Ho-hyeon with a serious criminal offence under the NSL not only restricts his freedom of expression, opinion, and association but also threatens and curtails the space for academic debate in South Korea. (For more details on the Capitalism Research Society’s case, please refer to the Appendix: Case A-5).

In another case, the Special Investigation Bureau of the Gyeonggi provincial police force initially detained Kim Myeong-soo, a bookseller and PhD student, in May 2007 for 12 days for questioning, searched his premises and charged him with violating Article 7(5) of the NSL for selling 140 books and possessing 170 others “with the intention of endangering the existence and security of the State”.

Kim Myeong-soo told Amnesty International that “I have visited nearly every public library around Seoul to support my argument that all the books seized from me as criminal evidence

are readily available at government-run libraries.”⁹ The books were also stocked in the National Assembly Library and in large book stores. On 22 February 2012, the Suwon District Court of Appeal sentenced Kim Myeong-soo to six months in prison and two years’ suspended sentence. He has appealed against the sentence at the Supreme Court. The case has taken five years of Kim Myeong-soo’s life during which time he has suffered serious economic and psychological repercussions in his ordeal to defend himself against the NSL charges. He had to close his online book store, found it very difficult to find other work and now depends on others for his livelihood. Facing extreme stress, he also had to abandon research on his doctoral thesis. Kim Myeong-soo said:

*“The books that ... have been presented as substantial evidence against me during the last five years of trial... are materials anyone who studies North Korea or North Korean literature should possess and read. Just what materials are North Korean scholars and North Korean literature scholars supposed to read?”*¹⁰

The authorities’ resort to the NSL has denied Kim Myeong-soo his right to freedom of expression, opinion and academic research and debate and is also an arbitrary sanction as he is only one of many online booksellers who sell books on North Korea. (For more details on Kim Myeong-soo’s case, please refer to the Appendix: Case A-2).

The increased use of NSL provisions has imposed a heavy human cost on those investigated, charged, prosecuted or imprisoned as well as their immediate family members. According to Kim Hyung-geun (a teacher charged under the NSL):

*“The problem [of the NSL] is that it destroys the individual in question. Government power is supposed to protect the lives of its citizens, but instead it consistently condemns the very least individual conscience, saying it can support anti-state organizations.”*¹¹

Kim Hyung-geun spoke of his experience after he was charged under NSL provisions:

*“In a word, it was tragic...The anxiety, the desperation...It felt like being banished from the Korean society.... In reality, when you are arrested under the National Security Law, all your relationships such as close family and friends are severed. I myself felt like I was under strict surveillance through my cell phone and computer, which caused me to become extremely tense, intimidated and unable to maintain (social) relationships.”*¹²

- **The authorities are using NSL provisions as a tool to censor South Korean online debate on North Korea.**

The authorities are using NSL provisions as a tool to censor South Korean online debate on North Korea. Park Jeong-geun, a young man in his 20s, has been subjected to long hours of questioning by the Gyeonggi provincial police force (in October 2011), has had the photography studio where he works and his house searched (in September 2011) and was detained for questioning in January 2012 and charged on 20 January for violating Article 7 of the NSL. On 21 November 2012, Park Jeong-geun was sentenced to 10 months in prison

and two year's suspended sentence. While the judgment acknowledged that some of Park Jeong-geun's posts were parody, it stated that overall, his acts were tantamount to "supporting and joining forces with an anti-state entity."¹³

Park Jeong-geun was accused of re-tweeting messages from a banned North Korean website even though this was clearly done to satirize the North Korean government, and possessing a book published in North Korea without obtaining prior clearance. He had borrowed the book from a friend, who was also investigated. Park Jeong-geun was shocked to be targeted under the NSL having long been a peaceful critic of the North Korean government. In December 2011 he told Amnesty International how he had suffered from sleeplessness and stress during and due to the investigations. (For more details on Park Jeong-geun's case, see Appendix: case A-1).

The NSL has long been used as a form of censorship, to imprison people for publishing and distributing material deemed to "benefit" North Korea. Now the law enforcement authorities are using NSL provisions to reduce the scope for online discussions on North Korea by increasing the prosecutions and shutting domestic websites for what is perceived by the authorities to be pro-North Korean content. The number of people prosecuted for pro-North Korean online activities increased from five in 2008 to 82 in 2010 (51 as of October 2011). The number of domestic websites shut down for pro-North Korean content rose from 18 in 2009 to 178 as of October 2011. During the first 10 months of 2011, the police demanded web hosts delete 67,300 posts they believed threatened national security by "praising North Korea and denouncing the USA and the government," a sharp rise from 14,430 posts in 2009.¹⁴

If the police or the NIS ask a webhost to delete a post or a website and the request is denied, the case goes to the Korea Communications Standards Commission (KCSC) to be examined. If the KCSC determines the NSL has been violated, it asks the responsible party to delete the post or to shut down the website. If the demand is not respected, the case goes to the Korea Communications Commission (KCC) which has the power to issue an administrative order. If a person or an organization refuses to comply with the order, they can be punished by two years' imprisonment or a fine of about US\$9,200.

In this process, KCSC effectively plays the role of a judge ruling whether the post or website is in violation of the NSL.

According to KCSC data submitted to National Assembly member Yu Seung-hee, between 2008 and 2012 the KCSC approved nearly 98 per cent of suspected violations of the NSL online. This compares unfavourably with the general conviction rate for NSL cases which is 21 per cent¹⁵.

According to Chang Yeo-kyung, Jinbonet activist, KCC ordered Jinbonet, which is an advocacy group for freedom of expression on the internet and provides webhosts to civil society, to shut down Hanchongryun's website, an organization the Supreme Court deemed enemy-benefiting in August 2011. KCC also ordered Sarangbang Group for Human Rights and the Labour Front, a workers rights' group, to delete a post on its Freeboard which was perceived to be in violation of NSL on 15 November 2011. The item was not posted by the group, but by someone else. The three organizations refused to comply with the order in

defence of freedom of expression, and now face punishment.

- **The NSL has been used in a politically motivated manner against those who had been to North Korea with official permission from the previous administrations of President Kim Dae-Jung and President Roh Moo-hyun who adopted engagement policies towards North Korea.**

The NSL has been used in a politically motivated manner against those who had been to North Korea with official permission from the previous administrations of President Kim Dae-jung and President Roh Moo-hyun who adopted engagement policies towards North Korea. The Seoul Central District Court sentenced Kim Eun-hye to three-and-a-half years imprisonment for breaching NSL Article 4 (Accomplishment of purpose Clause),¹⁶ Article 6 (Infiltration and escape clause),¹⁷ Article 7 (Praise and incitement clause)¹⁸ and Article 8 (Meeting and correspondence with an anti-government organization clause).¹⁹ Kim Eun-hye was investigated in November 2010 on charges that she received orders from North Korea and under suspicion of being involved in espionage activities for sending an analysis of South Korean student movement groups under orders from North Korea. However Kim Eun-hye's husband Kim Young-soo told Amnesty International in November 2011 that she had visited North Korea in 2004 with permission from South Korea's Ministry of Unification and had been involved in organizing a North-South Korea Students' festival in North Korea. She had been asked by the North Korean organizers to send a profile of the South Korean student participants who had agreed to join this festival. According to Kim Young-soo, Kim Eun-hye had prepared a report but had not sent it to North Korea. Kim Eun-hye has been sentenced in part because when she was a student she was a staff member of Hanchongryun, an organization the Supreme Court deemed enemy-benefiting throughout the 1990s and until the mid 2000s. Kim Eun-hye found it very hard to believe that she was being charged for activities conducted with the endorsement and support of her government so many years in the past.

The NSL charges and prison term caused Kim Eun-hye and her family significant personal suffering. When she was detained in 2011, Kim Eun-hye was separated from her newborn daughter who had to be cared for by her husband. Following an appeal against this detention, she was released on probation in February 2012 while her case is on trial at the Seoul High Court. On 16 August 2012, the Seoul High Court sentenced Kim Eun-hye to one year and six months in prison and three years' suspended sentence. The use of the NSL in Kim Eun-hye's case is both politically motivated and arbitrary. Kim Eun-hye was one of hundreds of South Korean nationals who contacted North Koreans and visited North Korea as part of pro-engagement policies pursued by a previous administration. If Kim Eun-hye was charged under the NSL charges solely for being a North Korean sympathiser, then the South Korean authorities are violating her rights to freedom of expression and opinion. (For more details of Kim Eun-hye's case, please refer to the Appendix: case A-7)

The authorities also used the NSL in a politically motivated and arbitrary manner when it targeted and punished several members of another group, Silcheonyeondae. This group received official funding from the previous South Korean government to identify areas to fulfil the agreements made in the June 2000 meeting between former South Korean President Kim Dae-jung and the then leader of North Korea Kim Jong Il. Members of the group were charged for the meeting with North Korean people and convicted in the Supreme Court.

- **Amnesty International has also received testimony that the investigative authorities have ill-treated detainees and witnesses and denied detainees' access to relatives when they exercised their right to silence and did not respond to interrogations.**

Amnesty International has also received testimony that the investigative authorities have ill-treated detainees and witnesses and denied detainees' access to relatives when they exercised their right to silence and did not respond to interrogations. In what the authorities term the Wangjaesan case, five men were arrested in August 2011 and were charged with forming an anti-government organization and conducting espionage activities following suspicion that they had contact with North Koreans. The five men refused to answer questions put to them during the interrogation by the National Intelligence Service (NIS). Subsequently, they were given very limited access to their family members. Their wives told Amnesty International in November 2011 how the investigative authorities had ill-treated them. In one case, two wives of the detained men were summoned for interrogations that took place in windowless rooms and lasted from 9am to midnight. One of the wives described how she felt deeply humiliated by being observed using the toilet during an interrogation break through doors constructed to facilitate such observation. The authorities had reportedly phoned over 120 people acquainted with the detained men to summon them for interrogation. Among these, most were associated with civil society organizations whose views supported a pro-engagement approach to North Korea which appeared to differ from the Lee administration's North Korea policy. The case has had a chilling effect on these groups, with many in fear of receiving the dreaded phone summons from the NIS. (For more details on the Wangjaesan case, see Appendix: case A-4).

- **Another area of concern has been the conviction of those accused on NSL charges on the basis of evidence collected by the NIS through means that were judged to be unconstitutional by the Constitutional Court**

Another area of concern has been the conviction of those accused on NSL charges on the basis of evidence collected by the NIS through means that were judged to be unconstitutional by the Constitutional Court. In the Beomminryeon case, the NIS wiretapped most of the communication facilities used by the Secretary General of Beomminryeon, Lee Kyung-won between 30 July 2003 and 7 May 2009 when he was arrested on charges of

breaching the NSL. The Communication Secrecy Law stipulates that the NIS must seek official permission from a court every two months to wiretap a suspect without his or her knowledge. In breach of this law, the NIS monitored Lee Kyung-won's landline, mobile phones, fax, internet including his email messages, and postal mail without a judge's permission for over 68 months. When material collected in this manner was presented as evidence in the case, the Seoul Central District Court Judge requested the Constitutional Court rule on its admissibility. In December 2010, the Constitutional Court ruled that collecting evidence in this manner was not admissible. Despite this judgment, the Seoul District Court judges then listened to this evidence. An Amnesty International delegation was present in one such court hearing in November 2011. In July 2012, the President of the South Korean regional office of Beomminryeon, Lee Kyu-jae, was sentenced by the Seoul High Court to three years and six months in prison while Lee Kyung-won was sentenced by the same court to four years in prison. Another member Choi Eun-ah was sentenced to two years and six months in prison and four years' suspended sentence and not detained. They appealed against the sentence to the Supreme Court which rejected the appeal and upheld the Seoul High Court's sentence and convicted them for Article 5 (Voluntary assistance and receipt of money and goods clause), Article 6 (Infiltration and escape clause) Article 7 (praise, incitement, etc. clause) and Article 8 (Meeting and correspondence, etc. clause) in October 2012.

As of November 2012, two members, Lee Kyu-jae and Lee Kyung-won are imprisoned in Seongdong Detention Centre. Choi Eun-ah is serving a four year suspended sentence and is not in detention.

3. HISTORY AND CRITICISM OF THE NSL

3.1 SHORT HISTORY OF THE NSL

The NSL came into force on 1 December 1948 as a temporary measure to counter the threat posed by North Korea. It was based on the Law for Maintenance of the Public Security originally drafted by the Japanese Imperial government in the Korean Peninsula. The NSL made illegal both communism and recognition of North Korea as a political entity. It has been reformed and strengthened over time.²⁰

Since the signing of an armistice agreement at the end of the Korean War in 1953, millions of Koreans have been separated from each other across the divided peninsula. The de-militarized zone which separates North and South Korea is one of the most heavily fortified borders in the world. South Korean officials have argued that the country needs the NSL to counter the military threat from North Korea. According to NSL Article 1(1) "the purpose of this Act (Law) is to secure the security of the State and the subsistence of nationals, by regulating any anticipated activities compromising the safety of the State." Amnesty International acknowledges South Korea's security predicament and the right of all states to

maintain state security. However, security concerns should never be used as an excuse to deny people fundamental human rights including the right to freedom of expression as guaranteed by international standards.

From its inception, the NSL and its vague provisions have been used to detain thousands of writers, artists, academics, journalists, publishers, opposition politicians and students. This includes thousands of political dissidents including two who later became presidents, Kim Yong-sam (president from 1993 to 1997) and Kim Dae-jung (1998 to 2002). Some of these prisoners served sentences of 30-40 years, making them, prior to their release in 1998 and 1999, the longest serving political prisoners in the world.

Between 1948 and 1986, according to the Ministry of Justice, 230 political prisoners were executed under the NSL; there have been no executions after 1986. Between 1948 and into the 1990s, thousands were tortured. Confessions extracted through torture were used to charge and convict many who received punishments of several years' imprisonment.

From around 1998 to 2008, the number of people charged under the NSL fell sharply under the presidencies of Kim Dae-jung (a former prisoner of conscience and death-row prisoner) and Roh Moo-hyun (a human rights lawyer) who initiated and followed pro-engagement policies with North Korea and personally supported abolition of the NSL. According to Amnesty International's estimates, between the end of 1999 and November 2002 (during Kim Dae-jung's presidency), the number of those detained under NSL fell from 82 to at least 41. Between December 2004 and 2007 (under Roh Moo-hyun's presidency) the number of those detained under the NSL fell to between at least nine and eight prisoners respectively.²¹

Between 2004 and 2007, President Roh and his administration supported the abolition of the NSL but could not gather requisite support from the National Assembly.

After inauguration of Lee Myung-bak's administration, most NSL cases are partly connected with the candlelight demonstrations in 2008.²² Admittedly, the context of tense inter-Korean relations also needs to be noted. The Lee administration adopted a tougher approach to South Korea's relationship with North Korea. Subsequently, since 2008 the number of people charged under provisions of the NSL has increased as has resort to the NSL to suppress criticism towards governments and control debates on North Korea.

3.2 THE SOUTH KOREAN CONSTITUTIONAL COURT AND NHRCK PERSPECTIVES ON THE NSL

The Constitutional Court has been asked to rule on the constitutionality of the NSL several times. Each time it has ruled that the NSL is constitutional. Key to that determination is the assertion that the courts interpret the NSL in a manner that balances between national security and human rights.

On 2 April 1990, the Constitutional Court held paragraphs 1 and 5 of Article 7 of the NSL to be compatible with the Constitution if applied only when the security of the State is endangered, or when the incriminated activities undermine the basic democratic order of the country. This was reflected when the NSL was amended a year later in May 1991 by the National Assembly. The amendments (Act 4373), were perceived by institutions including the Constitutional Court as successful in reducing ambiguities in the NSL and thereby minimising the scope for its abuse. For instance, following the 1991 amendment, Article 1(2) of the NSL was adopted stipulating:

“In the construction and application of this Act, it shall be limited at a minimum of construction and application for attaining the purpose as referred to in paragraph (1), and shall not be permitted to construe extensively this Act, or to restrict unreasonably the fundamental human rights of citizens guaranteed by the Constitution.” (Inserted by Act No. 4373, May 31, 1991).

The 1991 amendment of the NSL also abolished Article 2(2) of the Law, which stated that all communist states are anti-government organizations.

On 23 August 2004, the National Human Rights Commission of Korea (NHRCK),²³ publicly supported the abolition of the NSL calling the law a violation of ‘freedom of thought, conscience, and expressions...’²⁴ However, in a 26 August 2004 ruling, the Constitutional Court again concluded that Article 7 of the NSL is constitutional. It insisted that the courts should interpret the NSL rationally and in a manner that strikes a compromise between national security and human rights. The criteria for such interpretation were kept vague. In its 2004 decision, the Constitutional Court ruled that the NSL, and the continued use of Article 7, was constitutional against any action committed “with the knowledge of the fact that it might endanger the existence and security of the State or democratic fundamental order.”

According to South Korean legal experts including lawyers and academics, this criterion of interpretation is still unclear. As a result, the revised Article 7 has failed to curb misuse or abuse of the NSL.

The South Korean government cited this 2004 Constitutional Court ruling in its response to concerns raised by UN Human Rights Council members in 2008 during their initial review of South Korea’s performance under the Universal Periodic Review (UPR):

“Constitutional Court has presented strict criteria of interpretation for the law so as to prevent abuse and arbitrary interpretation of the law and to ascertain the constitutionality of its application. The Ministry of Justice and the Prosecutors’ Office are also making efforts to apply the law prudently in accordance with the jurisprudence of the Constitutional Court and other courts.”²⁵

The 2004 Constitutional Court decision went against the NHRCK’s recommendation to the South Korean government to abolish the NSL. The decision rationalized the continuation of the NSL provisions.²⁶

Following elections to the National Assembly in October 2004, Amnesty International wrote to the leaders of political parties and the newly elected members of the 17th National Assembly on the issue of the NSL. Amnesty International expressed its strong disagreement with this Constitutional Court ruling that Article 7 does “not excessively restrict the conscience, ideology, knowledge, art, speech and press or infringe on its essential nature.”²⁷

In September 2004, President Roh Moo-hyun stated that he supported the abolition of the NSL. However, the Roh administration could not abolish the NSL as that was not supported by a majority of the members of National Assembly. Since it took charge in February 2008, the Lee Myung-bak administration has not shown any support for debate on abolishing or even amending the NSL. Neither was the NSL discussed in the National Assembly in part due to the context of the increasingly tense relations in inter-Korean relations. Instead, as the cases detailed in this briefing demonstrate, abuse of the NSL has continued, highlighting the need for further clarification and reform. In its present form, the NSL continues to provide a vehicle for human rights violations.

In its recommendations for the first National Action Plan for the Promotion and Protection of Human Rights (NAP) in January 2006, the NHRCK had taken the position of calling for the abolition of NSL. However it took a step backward in its recommendations for the second NAP in January 2012 where it called for a reduction in human rights violations in applying NSL and not for its abolition.

3.3 INTERNATIONAL CONCERNS ABOUT KEY PROVISIONS OF THE NSL

Amnesty International has long campaigned to highlight the dangerous deficiencies in the NSL which mean that the law fails to meet international standards that require all criminal offences to be defined clearly so that people understand what conduct is prohibited.

Amnesty International has also consistently documented how its poorly defined provisions are used in practice to imprison people engaged in non-violent political activity. The authorities use the NSL mostly against “anti-state organizations”. According to Article 2 of the NSL, the phrase means “a domestic or foreign organization or group which uses fraudulently the title of the government or aims at a rebellion against the State; and which is provided with a command and leadership system.” The term “anti-state organization” has been interpreted arbitrarily and loosely. One interpretation by South Korean authorities is that North Korea is an anti-government organization, as the two countries do not recognize each other’s existence except in *de facto* terms.

In one case described in this briefing, the prosecution charged five men in the Wangjaesan case (Case A-4) with violating Article 3 of the NSL. The penalties can be harsh: for instance, a person who is found to have established or is the leader of an anti-government organization can be sentenced to life imprisonment or even face capital punishment, though no person has been sentenced to death for this crime in South Korea since the 1980s.

Most people charged with violating the NSL are charged under provisions of Article 7. Under this Article, the charges are vaguely worded and prone to varying interpretations and arbitrary implementation and enforcement as demonstrated in the cases detailed in this briefing. For instance a person who “praises” or “propagates” “the activities of an anti-state organization” and/or found to be involved in enemy-benefiting activities (pro-North Korea activities) can be investigated, detained and even charged for violating the NSL. For instance, the twitter user Park Jeong-geun, (see Case A-1), Kim Myeong-soo, the online bookseller (see Case A-2), the Capitalism Research Society (see Case A-5), the eight members of the Socialist Workers League (See Case A-6) were all found to have violated Article 7 of the NSL.

These vague clauses have been used arbitrarily to arrest, charge, detain and imprison people who have tried to exercise their basic rights to freedom of expression and association, in violation of the International Covenant on Civil and Political Rights (ICCPR) to which South Korea has been a state party since January 1990.

After examining its initial report under the ICCPR in July 1992, the Human Rights Committee, the UN expert body charged with overseeing the implementation of the Covenant by State parties, recommended to South Korea that:

“A serious attempt ought to be made to phase out the National Security Law which the Committee perceives as a major obstacle to the full realization of the rights enshrined in the Covenant and, in the meantime, not to derogate from certain basic rights.”²⁸

Under Article 19(3) states are permitted to restrict freedom of expression under three conditions: that such restrictions have been provided for by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.²⁹ By using the NSL provisions to target peaceful individuals and groups who are perceived to be critical of government’s policies, especially towards North Korea, Amnesty International is concerned that the South Korean government goes beyond the restrictions provided by Article 19(3) of the ICCPR. In 1999, the Human Rights Committee concluded on the NSL “that the restrictions placed on freedom of expression do not meet the requirements of Article 19, paragraph 3 of the Covenant, as they cannot be regarded as necessary to protect national security.”³⁰

In November 2006, following consideration of South Korea’s third periodic report, the Human Rights Committee further expressed grave concern:

“[T]hat prosecutions continue to be pursued, in particular under article 7 of this law. The Covenant does not permit restrictions on the expression of ideas, merely because they coincide with those held by an enemy entity or may be considered to create sympathy for that entity. The Committee also emphasizes that internal directives regarding prosecution policy do not provide adequate guarantees against the use of article 7 in a manner that is incompatible with the Covenant.”³¹

It further pointed out that the restrictions placed on freedom of expression were antithetical to the requirement of Article 19 of the ICCPR, which provides for the right to freedom of

expression, and that South Korea “should as a matter of urgency” ensure that Article 7 and any sentences imposed under it were compatible with the ICCPR.³²

The Committee also has stated that:

*“[N]othing in (the Covenant) may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”.*³³

According to the Committee, “Paragraph 3 (of Article 19 of the ICCPR) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19.”³⁴

In May 2008 the UN Human Rights Council's Working Group reviewing South Korea's performance under the UPR recommended the government take concrete steps to abolish the NSL or amend the law to bring it in line with international standards.³⁵ In response, the South Korean government “reaffirmed that the National Security Law should not be misused or interpreted arbitrarily.”³⁶ On 25 October 2012, when South Korea came up for its second UPR, several countries raised concern on the continued use of the NSL and recommendation was made with reference to “(a)mending the National Security Law to prevent its arbitrary application and abusive interpretation.”³⁷

At the end of his visit to South Korea in 2010, the UN Special Rapporteur for Freedom of Opinion and Expression, Frank La Rue, expressed concern at the “shrinking space for freedom of expression in the Republic of Korea, primarily due to new and more restrictive interpretations and application of existing laws”. In his report to the Human Rights Council in 2011, he was more emphatic, calling on the government to abolish Article 7 of the NSL on the grounds that “it is vague, inhibits legitimate discussions on matters of public interest, and has a long history of seriously infringing on human rights, in particular the right to freedom of opinion and expression.”³⁸

4. THE PROCESS OF APPLICATION OF THE NSL BY LAW ENFORCEMENT AUTHORITIES

Any investigations and prosecutions under the NSL are conducted in close cooperation by the prosecution service, the police and the National Intelligence Service (NIS).³⁹ They are responsible for the increased application of the NSL. In conducting their role within the criminal justice process, the police are supervised by the prosecution. In August 2011, in a

speech, Prosecutor General Han Sang-dae vowed to "declare war" on North Korean sympathizers: "They must be punished and removed." He defended tough measures against those who praise the North, calling it "a national misfortune if there are still people who have yet to abandon illusions about North Korea."

4.1 THE INVESTIGATION PROCESS (*SUSA*)

Initially, when the police authorities or the NIS receive or obtain information suggesting a person is a member/staff of an "anti-state organization"⁴⁰ or an "enemy benefiting organization" or an individual who is a threat to the security of the nation,⁴¹ they register a new case for investigation (*ipgon*) and start the investigation process to establish the case. Whichever body initiates the investigation is then responsible for questioning or interrogation at this stage.

Once they consider they have enough evidence, they transfer the case (*songchi*) to the prosecutors.

Once the prosecutors feel confident that case can result in a conviction in the trial, they file the case to courts (*kiso*)

And the trial (*cheppan*) begins.

At any stage (i.e. *ipgon*, *songchi*, *kiso*, and *cheppan*), the investigative authorities (the police, NIS and prosecution service) can arrest/detain the suspects.

The role of the judiciary is important as the suspect's arrest and detention has to be decided by the judge at the request of the police and/or prosecution. The judge then considers and issues arrest or detention warrants (*kusok*⁴² *yongchchang* or *chepo yongchchang*).

During the course of their investigation, the investigative authorities have the power under Articles 113, 215 of the Criminal Procedure Act and Article 12(3) of the Constitution to conduct search and seizure operations (*apsu-susek*) of the offices and/or houses of those connected with the person and organization under suspicion. They are required to have warrant for the operation which is issued by the court.

Suspects, who are investigated under suspicion of violating Articles 3, 4, 5, 6 and 8, 9 of the NSL (constituting, etc. of an anti-state organization), can be detained for a maximum of 50 days in total (maximum period of 20 days by the police or NIS and subsequently a maximum of 30 days by the prosecution).

Suspects being questioned under suspicion of violating Articles 7 or 10 can be detained for maximum period of 30 days (10 days in the police and NIS and maximum period of 20 days under the prosecution before being charged). A lawyer can be present during the questioning of the suspects though in many cases, suspects are questioned without one.

4.2 THE TRIAL PROCESS

The length of a trial (*cheppan*) of an NSL case varies depending on whether the defendants are detained or not. There is a prescribed time limit of six months in the first stage or trial at the District Court level (*1-shim*) involving detained suspects.⁴³ No such time limits apply where suspects are not detained. This can result in long delays, especially at the stage of the District Court. For instance, the case of online bookseller Kim Myeong-soo (See Case A-2) took more than three years at the District Court stage.

Trials are held at the District Court and, in principle, they are open to the public. However, in some cases including the Wangjaesan case (Appendix: Case A-4), some of the hearings were not open to the public.

Depending on the court decision, the prosecutors or the defendants can appeal against the sentence and the case is then moved to the Courts of Appeal or the High Court (*2-shim*). The High Court's decision can be appealed against and then moved to the Supreme Court which is the final court of appeal.

5. STATISTICS – INCREASED USE OF THE NSL SINCE 2008

Between 2008 and 2011, the number of new cases has increased from 46 to 90; an increase of 95.6 per cent. The number of detentions under NSL charges has doubled from 16 in 2008 to 32 in 2010 but has registered a decline to 19 in 2011.⁴⁴ However, this increase bucked a declining trend before 2008. According to the National Prosecutors' Office, the number of new NSL *ipgon* cases had been in decline - from 231 in 2002 to 46 in 2008. Similarly, detentions under NSL charges dropped from 131 in 2002 to 16 in 2008.

While judges have played a role in checking and curtailing trends by not accepting all warrants requested, it must be noted that they have still approved many pre-trial detentions and search and seizure requests made by the police, prosecution and the NIS. According to a recent study of the NSL by the NGO MinByun (the Lawyers for a Democratic Society), "National Security Act, 2008-2010," as many as 43.2 per cent of all requests by prosecutors for detention warrants under the NSL between 2008 and 2010 were quashed by the courts. In comparison, the average rejection rate of arrest/detention warrants, in general, by Korean courts is 24.3 per cent.⁴⁵

This high number of rejections by the courts could also be a reflection of the weakness of the evidence prepared by the prosecution, police and NIS authorities. However Amnesty International is also concerned at the fear, suffering and social stigma that those people investigated under the NSL face for months and at times years before, in many cases, it is found that they have no case to answer.

6. CONCLUSION

Since 2008, the South Korean authorities have increasingly used vaguely worded clauses of the NSL to arbitrarily target people or organizations perceived to oppose government policies, especially on North Korea.

As shown in the cases detailed in this briefing, the NSL continues to be used as a tool to attempt to silence dissent, and to harass and arbitrarily prosecute individuals and civil society organizations who are peacefully exercising their rights to freedom of expression, opinion and association. The investigative authorities have used the NSL to reduce the public space for debate and academic freedom. The provisions of the NSL have also been used as a form of censorship to restrict the online sphere. The NSL has also been used to punish people for publishing and distributing material expressing views that oppose the positions or policies of the government. The NSL has been used to remove people who are perceived to threaten established political views, to prevent people from taking part in discussions surrounding relations with North Korea.

The NSL has also been used as a tool for harassment, with those investigated or charged under the NSL losing their livelihood; with relatives being denied access to the detained suspects and in turn facing questioning; with those charged suffering from physical and mental exhaustion and stress and social stigma. In doing so, the authorities are reviving the NSL's "long history of seriously infringing on human rights".⁴⁶ Meanwhile, by routinely invoking the NSL arbitrarily, South Korea continues to flout its international human rights obligations and commitments.

7. RECOMMENDATIONS

Amnesty International's recommendations to the Government of South Korea, newly elected Members of the National Assembly and all Presidential candidates preparing for the December 2012 elections:

- Abolish or substantially amend the NSL in line with the country's international human rights obligations and commitments;
- Immediately and unconditionally release all prisoners of conscience;
- Stop the arbitrary use of the NSL and ensure that freedom of expression, opinion and association are fully respected, protected, promoted and fulfilled;
- Promptly, transparently and effectively investigate all allegations of human rights violations stemming from the abuse of the NSL, bring suspected perpetrators to justice, and provide an effective remedy and redress to victims;
- Fully implement the recommendations made by the UN Human Rights Committee and other UN bodies with regard to the NSL.

APPENDIX: EMBLEMATIC NSL CASES

CASE A-1: PARK JEONG-GEUN (MALE, AGED 24) - NSL USED TO PUNISH SATIRE

In September 2011, the police conducted a search and seizure operation of Park Jeong-geun's house and photography studio⁴⁷ on suspicion he had violated the NSL. The police also copied his hard disks. According to the warrant authorizing the operation, "Park Jeong-geun used the social network service Twitter as a very effective method of propaganda. As of July 2011, the number of Park Jeong-geun followers reached 2000." As of 18 January 2012, he had 5,478 followers. Park Jeong-geun told Amnesty International:

"Search and seizure means they take your place and turn it completely upside down. They searched my house and shop, so I couldn't work at my shop, and I couldn't sleep in my own room after they searched it. And then I had to start taking medication prescribed by my psychiatrist... They went through everything including my pictures as a baby and I was so utterly humiliated. So I went to a therapy group for victims like me. Most of them were on medication like I was. They could not use public transportation, but took taxis everywhere they went for the fear of being followed, just like me."⁴⁸

During the search, the police discovered a book published in North Korea which was obtained without prior official permission. The authorities considered this as another breach of the NSL. Park Jeong-geun said he had borrowed the book from a friend, who was later investigated.

Park Jeong-geun is no supporter of North Korea; he is a member of the Socialist Party⁴⁹ that was very critical of North Korea.

Between 5 and 15 October 2011, the police interrogated Park Jeong-geun about his political beliefs in Suwon police station on five occasions. Each session lasted five hours. They asked Park Jeong-geun why he uploaded web links to North Korean songs on his Twitter account, whether he was aware that the Twitter was a powerful propaganda tool for the North Korea.

His crime was in his words:

"I re-tweeted tweets from a North Korean Twitter account. My intention was to lampoon North Korea's leaders for a joke; I did it for fun. I also uploaded and changed North Korean propaganda posters on Twitter; I replaced a smiling North Korean soldier's face with a downcast version of my own face and the soldier's weapon with a bottle of whisky."⁵⁰

Park Jeong-geun said: "My profile picture could also have got me into trouble under the NSL."

Park Jeong-geun says the whole process has left him physically and mentally exhausted, he has difficulty sleeping, suffers from nerves and is seeking treatment for stress. According to Park Jeong-geun, "Even though I disagree with North Korean communism, I'm interested in North Korean culture...I have a right to know about it, to express my freedom."⁵¹ Park Jeong-geun feels that as a target of an NSL investigation "my brain belongs to the state".⁵²

On 11 January 2012, Park Jeong-geun was detained in Suwon Detention Centre after the Suwon District Court issued a detention warrant requested by the prosecution. He was charged on 20 January with violating Article 7 of the NSL for uploading material from North Korean websites to his Twitter account though he was using it satirically. On 21 November 2012, Park Jeong-geun was sentenced to 10 months in prison and two years' suspended sentence for violating Article 7 of the NSL. He is expected to appeal against this sentence.

Amnesty International is concerned that the South Korean authorities have used the NSL to punish Park Jeong-geun for peacefully satirizing and lampooning North Korea's leaders via twitter. He has also been accused of possessing a book published in North Korea without the right permission. The authorities appear to have made heavy-handed use of vaguely worded clauses of the NSL against a critic of North Korea peacefully exercising his freedom of expression. Amnesty International is also concerned that the South Korean government is arbitrarily trying to control and punish those who express views that do not tally with the official view of North Korea.

CASE A-2: KIM MYEONG-SOO – PUNISHED UNDER THE NSL FOR SELLING THE ‘WRONG’ BOOKS AND DENIED ACADEMIC FREEDOM

On 3 May 2007 Kim Myeong-soo was initially arrested at his office in Suwon city, located south of the capital Seoul. Officers from the Special Investigation Bureau (*Boan Susadae*) of the Gyeonggi provincial police force searched the premises, seizing any book related to North Korea or which discussed issues related to Marxism or Socialism and had “revolution”, “history of revolution” or “Juche ideology” in the title. These included a biography of Karl Marx and “Red Star over China”⁵³. All the titles that Kim Myeong-soo sold were also stocked in the National Assembly Library and/or were available in large bookstores and were referenced by researchers. According to Kim Myeong-soo, “I have visited nearly every public library around Seoul to support my argument that all the books seized from me as criminal evidence are readily available at government-run libraries.”⁵⁴

Nonetheless, Kim Myeong-soo was taken by officers and detained until 15 May. During that time he was subjected to day-long questioning by three people. Immediately after in May 2007, he was charged with violating Article 7(5) of the NSL for selling 140 books and possessing 170 others “with the intention of endangering the existence and security of the State”. The case was then moved to Suwon District Court.

Kim Myeong-soo told Amnesty International in December 2011: “When I was first detained, my daughter was in high school; now she has graduated from university and I am still facing this NSL ordeal.”

On 30 March 2011, the Suwon District Court found Kim Myeong-soo not guilty. The prosecutors appealed against the decision; the appeal hearing started in July 2011. On 22 February 2012, the Suwon District Court of Appeal sentenced Kim Myeong-soo to six months in prison and two years’ suspended sentence. He has appealed against the sentence at the Supreme Court. The court case has already taken five years of Kim Myeong-soo’s life during which time he has been unemployed and dependant on others for his livelihood, fully occupied by the developments of the case, and suffering from great stress and insomnia.

According to Kim Myeong-soo:

“The books that precipitated this case have been presented as substantial evidence against me during the last five years of trial, but they are materials any scholar who studies North Korea or North Korean literature should possess and read... Just what materials are North Korean scholars and North Korean literature scholars supposed to read?”

Amnesty International is concerned that Kim Myeong-soo has been charged under the vaguely worded Article 7 of the NSL for selling books that the Gyeonggi police fear endangers the security of the country. Yet it appears that all the books are available in the South Korean

National Assembly Library and public libraries and/or being sold at large bookstores. Amnesty International is also concerned at the long years that Kim Myeong-soo has suffered fighting the NSL charges. As a consequence of the heavy demands of preparing a defence in this long drawn out case, Kim Myeong-soo had to close his online bookstore and suspend his doctoral research. In Kim's case, the authorities have used the NSL to suppress freedom of expression and academic freedom and attempted arbitrarily to dictate who can sell what books, especially with relation to content on North Korea.

CASE A-3: PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY (PSPD) - NSL CHARGES FOR CRITICISING THE GOVERNMENT INTERNATIONALLY

On 16 June 2010, the Seoul Central District Prosecutors' Office initiated investigations against staff of the NGO, People's Solidarity for Participatory Democracy (*Chamyeoyeondae* or PSPD) for sending an open letter and report to the 15 members of the UN Security Council. The documents questioned the results of the government's Joint Civilian-Military Investigation Group's (JIG) inquiry into the sinking of the South Korean naval ship *Cheonan*. The JIG had concluded that North Korea was responsible for the incident by torpedoing the *Cheonan*, killing 46 navy personnel.

In the documents the PSPD urged the governments of both South and North Korea to refrain from any provocative actions which would threaten peace on the Korean Peninsula. The report raised eight questions on the investigation and six problems with the process that was conducted.⁵⁵ The PSPD expressed the hope that "the UN Security Council makes a fair and reasonable decision considering all the grounds including PSPD's report⁵⁶... with utmost prudence, putting the highest priority on peace on the Korean Peninsula."⁵⁷

Prosecutors launched an investigation on the PSPD staff under suspicion of violating NSL Article 7 on grounds that sending the UN a letter (criticising the government's investigations) constituted an enemy-benefiting act. PSPD staff involved in the compilation and submission of the letter and report were reportedly summoned for further investigation.⁵⁸ The prosecution appeared to be influenced in its decision to charge and investigate the PSPD by pressure from certain right-wing political organizations.

On 10th August 2011, the Seoul Central District Prosecution Service announced that it had stopped its investigations and dropped the NSL charges against the PSPD and that it was free from the suspicion raised and filed by right wing groups.

According to Amnesty International's analysis of the evidence produced, the South Korean government had undertaken arbitrary legal action by instigating investigations against the PSPD under provisions of the NSL and the Criminal Code. The PSPD, which has consultative status with the UN, was communicating information and its views on legitimate matters of public interest to members of the UN Security Council and diplomatic missions in New York. By pursuing prosecution of PSPD staff, the South Korean government was harassing opposition voices within civil society, attempting to shrink the space for public debate and impinging on the rights to freedom of expression and association.

CASE A-4: WANGJAESAN CASE – SUSPECTS ILL-TREATED FOR MAINTAINING SILENCE DURING INTERROGATIONS

On 23 August 2011, the Seoul Central District Prosecutors' Office charged five men under NSL Articles 3 to 9 with forming an anti-state organization and conducting espionage activities following suspicion that they had contact with North Koreans. The authorities including NIS had conducted a search and seizure operation at their homes and offices on 4 to 6 July 2011.

The prosecutors claimed Wangjaesan was linked to Department 225 in North Korea, which has reportedly been in charge of espionage operations in South Korea since the early 1990s.

According to sources who wish to remain anonymous, in the course of investigation, the National Intelligence Service (NIS) summoned over 120 people for questioning, mostly from civil society organizations whose views supported a pro-engagement approach to North Korea which appeared to differ from the Lee administration's North Korea policy. Sources claimed the NIS threatened many with imprisonment if they did not cooperate and discouraged them from bringing a lawyer to interview sessions.

According to the mid-term investigation report issued to media on 25 August 2011 by the Seoul Central District Prosecutors' Office, the case constituted the largest anti-government organization since the Minhyukdang case in 1999.

The five men were detained in separate detention cells but not in isolation. According to the lawyers and wives of the detained men, during the questioning the NIS and the officials verbally abused and threatened them especially once they insisted on their right to remain silent during interrogations. Some were threatened by NIS investigators apparently in an attempt to force them to confess. When they refused to be transferred from the detention centre to the NIS offices for questioning, they were removed by force. One of the detained men was handcuffed and a rope tied round his body from morning until afternoon on his birthday.

In November 2011, Amnesty International met the wives of four of the detained men who said access to their husbands at the detention centre was very limited – they believed this was a consequence of the men's insistence on their right to remain silent during NIS interrogations. As conditionality for better access to their detained husbands, the wives were told by NIS not to meet or talk with the other wives. Only one of the five wives ever achieved access to her husband during their detention.

According to one of the wives:

“After all, the visit only takes 10 minutes. It can get tough in detention, because you feel cut off from your family. So I asked them why I was not allowed to see my husband, but they

would not give a straight answer. They told me that I would get to see him after the investigation is over. I kept demanding that they let me see my husband, and they turned me into a defendant. So I am told now that I cannot see my husband because I am an 'accomplice'. So we have the National Security Law that is capable of doing anything. I mean, it's managed to turn his wife, me, from a witness to a defendant, and the National Intelligence Service can deny visiting rights and use it as a tool for coercion..."⁵⁹

K1 was prevented from visiting her husband as her status had been changed into a suspect. K2 was questioned on 10 July 2011 and according to her, "questioning took place in windowless interrogation rooms and lasted from 9am until late evening (time unspecified) for one day."⁶⁰ She added that while she was allowed to have toilet breaks, the toilet in the interrogation room had a large glass panel providing no privacy from the male interrogators. She felt humiliated and complained to the National Human Rights Commission of Korea but no action has been taken on her complaint.

On 23 February 2012, the Seoul Central District Court sentenced Kim DK to nine years in prison, and three others to terms ranging from five to seven years. One man was released after he was sentenced to two years in prison and three years of suspended sentence. The Judge acquitted the five men of the charge of forming/establishing an anti-government organization as stipulated under Article 3 of the NSL.

CASE A-5: CAPITALISM RESEARCH SOCIETY – ARBITRARY USE OF NSL TO DENY FREEDOM OF EXPRESSION AND ASSOCIATION AND CURTAIL ACADEMIC DEBATE

On 21 March 2011, Choi Ho-hyeon, aged 38 (at time of arrest), was arrested along with two other men – Choi (no relation) and 24 year-old Ha. Initially, the prosecution tried to charge them for forming an enemy benefiting organization under Article 7 (Praise, incitement, etc.) of the NSL.

Choi Ho-hyeon was the first President of the Capitalism Research Society, an academic research group. At the time of the arrest, the police explained that “Choi and others, after organizing a pro-enemy group called New Generation Young Communists’ Red Flag in 2006, allegedly established subsidiary organizations in March 2007, including the Capitalism Research Society, with the goal of praising and encouraging North Korea.”⁶¹ On 23 March 2011, the police continued to detain Choi Ho-hyeon at the request of the prosecutors while releasing the two other men.

As part of its academic activities, the Capitalism Research Society had organised events called the Alternative Economy Camps for its members to study and discuss alternative economic models. The police considered the action guidelines adopted by the Capitalism Research Society at an Alternative Economy Camp held in January 2008 as “beneficial to the enemy (North Korea)”. The group was charged with breaching the NSL by having posted pro-enemy (pro-North Korea) writings on the internet on over 30 occasions.⁶² On 21 March 2011, the police questioned and searched the homes of 12 men including former presidents and members of the group. They confiscated materials from the Alternative Economy Camp, as well as computer hard disks, and USB devices.

Prosecutors dropped the more serious charge of forming an enemy benefiting organization under Article 7 against Choi Ho-hyeon, but retained the charge of carrying enemy benefiting materials. They additionally charged him with fabricating his medical documents to evade fulfilling the order from the South Korean Ministry of National Defense to join the reserve army force training.

On 19 August 2011, Choi Ho-hyeon was sentenced to two years in prison and three years of suspended sentence for violating Article 7 of the NSL. He was also prohibited from attending events organized by the Beomminryeon (see Case A-8) and participating in illegal demonstrations.

Amnesty International is concerned that the authorities have used NSL charges against the

staff of the Capitalism Research Society to deny their right to freedom of expression and association and curb their space for academic debate.

CASE A-6: SOCIALIST WORKERS LEAGUE CASE - INVESTIGATED, CHARGED AND PUNISHED UNDER THE NSL SOLELY FOR PEACEFULLY EXERCISING FREEDOM OF ASSOCIATION

On 26 August 2008, police initially arrested seven activists from the Socialist Workers League, including founder Professor Oh Se-chul, for violating Articles 3 and 7 of the NSL.

The Socialist Workers League was established in February 2008 and openly states its objective is to build a party for socialist workers. It calls for the abolition of the armed forces and police, and for building a “real socialist state”. It has been highly critical of North Korea, stating that it is a country where labour exploitation is rife. In total, the Socialist Workers League has about 70 members.

The members were charged under the NSL within six months of the inception of the Socialist Workers League. It posted statements advocating a socialist state on the internet. It published and distributed pamphlets during the candlelight demonstrations against US beef imports in 2008. Members of the Socialist Workers League carried their own flag during the candlelight demonstrations.

The Seoul Central District Court rejected the request for arrest warrants submitted by the Prosecutor’s Office on grounds of insufficient evidence between August and October 2008. The court further justified its decision on grounds that the activists did not represent a substantial threat to the security of the country. The Court’s decision to reject successive requests for arrest warrants from the prosecutors was unprecedented.⁶³

In August 2009, after a year of investigations, eight Socialist Workers League members were charged with violating Article 7 of the NSL.

On 24 February 2011, the Seoul Central District Court found eight members of the Socialist Workers League guilty of breaching Article 7(1) of the NSL by “propagating or instigating a rebellion against the State”.⁶⁴

Professor Oh Se-chul was sentenced to one-and-a-half years’ imprisonment, suspended for three years, and fined 500,000 Korean won (approximately US\$500). The other seven received sentences ranging from one to one and a half years, suspended from two to three years. None of the eight has been arrested and all appealed to the Seoul High Court.

On 16 December 2011, the Seoul High Court increased the sentences imposed by the Seoul Central District Court. Four including Oh Se-chul were sentenced to two years in prison, three

years of suspended sentence and two years of suspension of qualifications. The other four were also sentenced to one-and-a-half years' imprisonment, three years of suspended sentence and one and a half years of suspension of qualification. None of the eight men were sent to prison.

To Amnesty International's knowledge, members of the Socialist Workers League have been investigated, charged and punished under the NSL solely for peacefully exercising their freedom of expression, assembly and association.

CASE A-7: KIM EUN-HYE – PUNISHED UNDER NSL AS A ‘SPY’ FOR VISITING NORTH KOREA WITH OFFICIAL PERMISSION FROM AN EARLIER ADMINISTRATION

On 30 July 2009, the National Intelligence Service (NIS) and Seoul Metropolitan Police Agency (police) conducted a search and seizure operation at Kim Eun-hye’s home and arrested her. She was released on 1 August 2009; the investigation continued though she was not detained. The NIS and the police suspected her of taking orders from North Korea during her visit there in 2004 and spying thereafter. Following her initial arrest, she was released on 2 October 2009 but continued to be investigated but not detained. Then on 9 November 2010 the Seoul Central District Prosecution Service charged her. They contended that during her 2004 visit she had received orders as a leader of the pro-North Korean university students’ group, Hanchongryun (South Korean Federation of University Students’ Councils), from North Korea and that she was involved in espionage by analyzing student councils in South Korean universities and for sending the analysis in the form of report to North Korea.

In 2004, Kim Eun-hye had visited North Korea with permission from South Korea’s Ministry of Unification under the then-ruling administration’s official pro-engagement policy with North Korea. Kim had been involved in organizing a North-South Korean Students’ festival in North Korea and had been asked by the North Korean organizers to send a profile of the participants to the festival. She seems to have prepared a report after her return to South Korea but had not sent it to North Korea. As her husband Kim Young-soo said to Amnesty International on 26 November 2011, the question is:

“What could be the definition of a spy? What constitutes an espionage act? After all, what crime did Eun-hye do? She was only doing her job of providing profiles of participants to the organizers.”⁶⁵

Kim Eun-hye had been a student activist and had worked as a staff member of the university students’ group, Hanchongryun, declared by the Supreme Court as an enemy-benefiting organization on several occasions in the 1990s and later, in 2005 and 2006. The investigative authorities appear to have targeted her on account of her earlier work at Hanchongryun and that she was a supporter of North Korea. According to Kim Eun-hye:

“At that time I did work as a staff for the South Korean Federation of University Students’ Councils, but our inter-Korean projects were within legal boundaries so we did not think we would run into trouble with the National Security Law at all. Actually, I was quite surprised to find out that I was being prosecuted under the National Security Law.”

When she was being investigated, Kim Eun-hye was pregnant, in the eighth week of her pregnancy.

Only a day after her arrest, the NIS presented her the reason, which she described in a letter to her husband. The reason:

“In 2004, Kim met a Vice President of Pan Korean National Student Association for Reunification (Beomchonghakryun) North Korean branch and received orders. From 2005 to 2006, Kim worked for enemy benefiting organization Hanchongryun and Beomminryeon. From 2006 to 2007, Kim praised and incited claims from the North and acts in concert with it.”

The prosecution service demanded that Kim Eun-hye be sentenced to 8 years in prison and the Seoul Central District Court sentenced Kim Eun-hye to 3 years and 6 months in prison after finding her guilty of violating Articles 4, 6, 7 and 8 of the NSL and detained her in Seoul prison on 14 October 2011. She appealed against this decision and case began in December 2011 at the Seoul High Court. She was released on probation on 1 February 2012.

By investigating, conducting search and seizure operations at her home, by detaining, and interrogating Kim Eun-hye for visits to North Korea which she had conducted with the official permission of an earlier administration's pro-engagement policy towards North Korea, the authorities appear to be using the NSL in a politically motivated manner. During her detention, Kim was separated from her baby daughter. When Amnesty International interviewed her husband in November 2011, he was taking care of their baby daughter alone.

According to Kim Eun-hye:

“When I was unexpectedly incarcerated and sentenced, I realized that the National Security Law really does finish people off, and that it's a terrifying and vicious law. At that point, it had already been six to seven years since the relevant activities took place and I was astounded that I could be indicted for something that happened so long ago. When I received my sentence my daughter was 19 months old. None of that mattered. I was accused of things I never did, I was separated from my baby...I was sentenced to three years and six months in jail. During that time, not only my happiness was undermined but my baby's happiness was shattered as well. But the National Security Law couldn't care less, what a vicious law...”

CASE A-8: BEOMMINRYEON – CONVICTION OF THOSE ACCUSED ON NSL CHARGES ON THE BASIS OF EVIDENCE COLLECTED BY THE NIS THROUGH MEANS THAT WERE JUDGED TO BE UNCONSTITUTIONAL BY THE CONSTITUTIONAL COURT

In the early hours of 7 May 2009, around 1,000 officials descended on the offices of *Beomminryeon*⁶⁶ (the Pan-Korean Alliance for Reunification of Korea) as part of a joint search and seizure operation in the Yongsan district of the capital, Seoul. The officials, from the National Intelligence Service (NIS) and National Police Agency, also searched 26 other sites, including residences of high-ranking officials of Beomminryeon, arresting six people in the process.

Lee Kyu-jae (aged 73; Chairman of the South Korea Regional Office), Lee Kyung-won (aged 43; Secretary General), and Choi Eun-ah (aged 37; Campaign Manager) were charged under Articles 3 to 10 of the NSL and faced trial at the Seoul Central District Court. On 9 November 2011, prosecutors demanded sentences of seven, eight and six years for Lee Kyu-jae, Lee Kyung-won and Choi Eun-ah respectively.

The NIS electronically wiretapped most of the communication facilities used by the Secretary General of Beomminryeon, Lee Kyung-won, between 30 July 2003 and 7 May 2009 when he was arrested. Lee had become Secretary General of Beomminryeon in 2003; that same year, the NIS asked the court for official permission to monitor his communications. In South Korea, the Communication Secrecy Law only allows wiretapping of suspects for a period of two months at a time; it has to be renewed thereafter through authorization by a court. The NIS extended the initial permission a total of 37 times but asked a court for permission only once. The NIS wrongly assumed that the permission could be automatically renewed. The NIS monitored Lee's land and mobile phones⁶⁷, fax, internet, email⁶⁸ and his postal mail, both official and personal.⁶⁹ Lee Kyung-Won was never informed of the investigation. Moreover, the NIS wiretapped his wife's emails though she had no connection to the case.

The NIS justified its actions on grounds that as Secretary General of Beomminryeon, Lee Kyung-won had been charged with violating the NSL by carrying out enemy-benefiting activities and for leading suspect social groups within South Korea under Articles 3 to 10 of the NSL. They added that "it was very difficult to get evidence as Lee had violated the NSL in very secretive manner and it was difficult to get evidence for illegal acts such as spying or for getting concrete evidence on charges of illegal communication as defined under the NSL."⁷⁰ When the NIS submitted this information collected through the surveillance as

evidence to the Seoul Central District Court on 28 November 2009, the judge requested the Constitutional Court to rule on the constitutionality of Article 6, Clause 7 of the Communication Secrets Act,⁷¹ querying whether evidence which had been collected in this manner could be admitted to court as evidence; and whether the NIS could continuously seek permission and extend its wiretapping for such a long period.

Lee Kyung-won was released on bail while the Constitutional Court considered the judge's request. In December 2010, the Court ruled that Communication Secrets Act Article 6, Clause 7 was unconstitutional. Nevertheless, the case against the Beomminryeon activists resumed in the Seoul Central District Court in March 2011 and the information collected by wiretapping was used. Amnesty International representatives attended one of the hearings at the Seoul Central District Court in November 2011 when this evidence was heard.

On 22 December 2011, the Seoul Central District Court sentenced Lee Kyu-jae to three years and six months imprisonment with a suspension of qualifications⁷² for four years; Lee Kyung-won was sentenced to four years with a suspension of qualifications for four years and Choi Eun-ah was sentenced to two-and-a-half years in prison with a suspended sentence for four years and a suspension of qualifications for four years. The court made the ruling based on evidences collected by wiretapping that was found to be unconstitutional by the Constitutional Court. In July 2012, the Seoul High Court sentenced Lee Kyu-jae, Lee Kyung-won and Choi Eun-ah to between two and half years to four years imprisonment. Lee Kyu-jae, Lee Kyung-won and Choi Eun-ah appealed against the High Court's ruling to the Supreme Court. In October 2012, the Supreme Court rejected their appeals and upheld the Seoul High Court's sentence and convicted them under Article 5 (Voluntary assistance and receipt of money and goods clause), Article 6 (Infiltration and escape clause) Article 7 (praise, incitement, etc clause) and Article 8 (Meeting and correspondence, etc clause).

As of November 2012, two members, Lee Kyu-jae and Lee Kyung-won are imprisoned in Seongdong Detention Centre. Choi Eun-ah is not detained but is subject to four years of her suspended sentence.

ENDNOTES

- 1 http://www.index.go.kr/egams/stts/jsp/potal/stts/PO_STTS_IdxMain.jsp?idx_cd=1745
- 2 Korean National Police Agency figures cited by The Hankyoreh, 29 November 2011
- 3 Concluding Observations of the Human Rights Committee: South Korea, UN Doc. CCPR/C/79/Add.6, 29 July 1992, para. 9.; Concluding Observations of the Human Rights Committee: Republic of Korea, UN Doc. CCPR/C/KOR/CO/3, 2 November 2006, para. 18; Report of the Working Group on the Universal Periodic Review: Republic of Korea, Addendum, Response of the Republic of Korea on the Universal Periodic Review recommendations, A/HRC/8/40/Add.1, May 2008, recommendations 4, 24, 33.
- 4 Prisoners of conscience are people who are arrested and have been detained or jailed because of their political, religious or other conscientiously-held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status, provided that they have neither used nor advocated violence.
- 5 Concluding Observations of the Human Rights Committee: South Korea, UN Doc. CCPR/C/79/Add.6, 29 July 1992, para. 9; Concluding Observations of the Human Rights Committee: South Korea, UN Doc. CCPR/C/79/Add.114, para.9.; Concluding Observations of the Human Rights Committee: Republic of Korea, UN Doc. CCPR/C/KOR/CO/3, 2 November 2006, para. 18; Report of the Working Group on the Universal Periodic Review: Republic of Korea, Addendum, Response of the Republic of Korea on the Universal Periodic Review recommendations, A/HRC/8/40/Add.1, May 2008, recommendations 4, 24, 33; Paragraph 97, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27/Add.2, March 2011 and <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights25October2012pm.aspx>.
- 6 In the absence of an official English translation of the NSL the translation quoted from in this report was published by a government-sponsored organization.
- 7 Amnesty International, "Time to Reform the NSL", February 1999, AI Index: ASA25/003/1999
- 8 See press statement by PSPD on the stance of the Presidential statement of the UN Security Council regarding the sinking of the South Korean Naval Vessel dated 15 July 2010 which includes attachments of the Cover letter and Report that the PSPD sent to the UN Security Council in June 2010 in the following link: <http://www.peoplepower21.org/English/40247>
- 9 AI Interview with Kim Myeong-soo in December 2011
- 10 AI Interview with Kim Myeong-soo in December 2011
- 11 AI Interview with Kim Hyung Geun in April 2012
- 12 AI Interview with Kim Hyung Geun in April 2012
- 13 Choe Sang-hun, "South Korean Gets Suspended Sentence in Twitter Case, New York Times, 21 November 2012
- 14 Choe Sang-hun, "Sometimes It's a Crime to praise Pyongyang", New York Times, 6 January 2012
- 15 Government data submitted at request of National Assembly member, Lee Yong-kyung an opposition lawmaker.
- 16 Article 4 (Accomplishment of Purpose) reads as follows: (1) If a member of an anti-government organization or a person who has received his order, commits any act to accomplish the purpose, he shall be punished as follows: <Amended by Act No. 4373, May 31, 1991>: 1.If he commits the act as prescribed in Article 92 through 97, 99, 250(2), 338 or 340(3) of the Criminal Act, he shall be punished by the penalty in the respective Article; 2. If he commits an act prescribed in Article 98 of the Criminal Act, or spies, collects, discloses, transmits or mediates any State secret, he shall be punished as follows: (a) If any military or State secret is a fact, thing or knowledge which is accessible to limited persons to acquire in order to avoid an important disadvantage to the national security, and the said fact, thing or knowledge shall be kept as a secret against any hostile country or anti-government organization, he shall be punished by capital punishment or imprisonment for life: and (b) In case of any military or State secret other than those as referred to in item (a), he shall be punished by capital punishment, imprisonment for life or imprisonment for more than seven years; <<"Military or State secret" provided in item (b) of this subparagraph is not in contravention of the Constitution as far as it is taken as meaning a

fact, thing or knowledge of substantial value which is not known to the public and, if it is divulged, may definitely threaten the national security, pursuant to the decision of constitutionality within limited scope which was made by the Constitutional Court on January 16, 1997>>; 3. If he commits the act as prescribed in Article 115, 119(1), 147, 148, 164 through 169, 177 through 180, 192 through 195, 207, 208, 210, 250(1), 252, 253, 333 through 337, 339 or 339 or 340(1) and (2) of the Criminal Act, he shall be punished by capital punishment, imprisonment for life or imprisonment for more than ten years; 4. If he destroys any transportation, communication, building or other important facilities used by the State or public organizations, or captures or entices any person, or moves or removes ships, aircraft, automobiles, weapons and other things, he shall be punished by capital punishment, imprisonment for life or imprisonment for more than five years; 5. If he commits the act as prescribed in Articles 214 through 217, 257 through 259 or 262 of the Criminal Act, or damages, conceals, forges or alters any documents or goods of State secret, he shall be punished by imprisonment for a definite term of three or more years; and 6. If he instigates or propagates the act as referred to in subparagraphs 1 through 5, or fabricates or circulates any false facts as to matters which threaten to provoke any confusion of social order, he shall be punished by imprisonment for a definite term of two or more years. (2) Any person who has attempted the crime as referred to in paragraph (1), shall be punished. (3) Any person who prepares for or plots the crimes as referred to in paragraph (1) 1 through 4, with the intention of committing them, shall be punished by imprisonment for a definite term of two or more years. (4) Any person who prepares for or plots the crimes as referred to in paragraph (1) 5 and 6, with the intention of committing them, shall be punished by imprisonment for not more than ten years.

17 Article 6 of the NSL reads as follows: (1) Any person who has infiltrated from, or escaped to an area under the control of an anti-government organization, with the knowledge of fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than ten years. (2) Any person who has infiltrated from or escaped to receive an order from, or consult an accomplishment of purpose with, an anti-government organization or a member thereof, shall be punished by capital punishment, imprisonment for life or imprisonment for more than five years. (3) Deleted (by Act No. 4373, 31 May 1991). (4) Any person who has attempted the crimes as referred to in paragraphs (1) and (2) shall be punished. (5) Any person who prepares for or plots the crime as referred to in paragraph (2), with the intention of committing it, shall be punished by imprisonment for not more than seven years. (6) Any person who prepares for or plots the crime as referred to in paragraph (2) with the intention of committing it, shall be punished by imprisonment for a definite term of two or more years.

18 See text box above.

19 Article 8 of the NSL reads as follows: (1) Any person who makes contact with a member of an anti-government organization or a person who has received an order from it, by means of a meeting, correspondence or other method, with the knowledge of the fact that it threatens to endanger the existence and security of the nation, or democratic fundamental order, shall be punished by imprisonment for not more than ten years. <Amended by Act No. 4373, May 31, 1991. (2) Deleted. (by Act No. 4373, May 31, 1991). (3) Any person who has attempted the crime as referred to in paragraph (1) shall be punished. (Amended by Act No. 4373, May 31, 1991). (4) Deleted. (by Act No. 4373, May 31, 1991

20 At the time of its adoption, the NSL contained 6 clauses. It has been revised in 1949, 1950, 1958, 1960, 1962 and 1980 when the NSL was wholly amended. On

31 December 1980, the Anti-Communist Law was merged to the NSL. Since then, the NSL has been revised in 1987, 1991, 1994, twice in 1997 and in 2011. Following these amendments, the number of clauses has increased to 25.

21 Amnesty International Reports 2000 to 2008

22 For more details on AI's concerns on Candlelight protests and its policing, see Amnesty International, "Policing the Candlelight Protests in South Korea", (AI Index: ASA 25/008/2008)

23 Founded in 2001.

24 Jung, Yang-Hwan Jung & Min-Hyuk Park, "National Human Rights Commission of Korea Urges Abolition of National Security Law", Dong-A Ilbo (Seoul), Aug. 24, 2004, accessible at <http://english.donga.com/srv/service.php3?biid=2004082555158>

25 Report of the Working Group on the Universal Periodic Review: Republic of Korea, Addendum, Response of the Republic of Korea on the Universal Periodic Review recommendations, A/HRC/8/40/Add.1, May 2008.

26 Information provided by law professors Lee Jaeseung (Konkuk University, Seoul) and Oh Dongsuk (Aju University, Suwon) by email exchange with AI in December 2011.

27 Open Letter to all Leaders of Political Parties: An Important Duty to Revitalise Efforts to Fundamentally Repeal or Review the National Security Law, AI Index ASA

25/009/2004, October 2004, p.1-4. Available at <http://www.amnesty.org/en/library/info/ASA25/009/2004/en>

28 Concluding Observations of the Human Rights Committee: South Korea, UN Doc. CCPR/C/79/Add.6, 29 July 1992, para. 9.

29 Article 19 (3) of ICCPR

30 Concluding Observations of the Human Rights Committee: South Korea, UN Doc. CCPR/C/79/Add.114, para.9.

31 Concluding Observations of the Human Rights Committee: Republic of Korea, UN Doc. CCPR/C/KOR/CO/3, 2 November 2006, para. 18.

32Ibid.

33 General Comment 34, (Geneva, 11-29 July 2011) para 21.

34 Ibid., para 23.

35Report of the Working Group on the Universal Periodic Review: Republic of Korea, Addendum, Response of the Republic of Korea on the Universal Periodic Review recommendations, A/HRC/8/40/Add.1, May 2008, recommendations 4, 24, 33 and corresponding response by S Korean government.

36Report of the Working Group on the Universal Periodic Review: Republic of Korea, Addendum, Response of the Republic of Korea on the Universal Periodic Review recommendations, A/HRC/8/40/Add.1, May 2008, recommendations 4, 24, 33 and corresponding response by S Korean government.

37 <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights25October2012pm.aspx>

38 Paragraph 97, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27/Add.2, March 2011.

39The prosecution reports to the Ministry of Justice and the police reports to the Ministry of Public Administration and Security.

40 Article 2 of the NSL.

41 Article 7 of the NSL

42Arrests (kusok) are when the police, after obtaining permission from a court, hold suspects in jail for the purposes of questioning as part of their investigation, initially for 24 hours.

43The initial trial at the District Court has to be finalised within six months after the defendant's detention; within four months at the appeal trial at the High Court and four months for final appeal when the case is reviewed by the Supreme Court.

44 This figure is sourced from National Prosecutors' Office.

45Minbyun, " National Security Act Report: 2008-2010," May 2011

46NHRCK, August 2004

47Owned by his father

48AI interview with Park Jeong-guen on 9 December 2011

49 Socialist Party which Park was a member of was dissolved in Feb. 2012.

50 AI interview with Park Jeong-guen on 9 December 2011

51 Louisa Lim, NPR, 1 December 2011

52 AI interview with Park Jong-geun on 9 December 2011.

53An account of the birth of Chinese Communism by the American journalist Edgar Snow,

54 AI interview with Kim Myeong-soo in December 2011.

55 "The PSPD's Stance on the Naval Vessel Cheonan Sinking", accessed from [http://image.ohmynews.com/down/etc/1/_386111_1\[1\].pdf](http://image.ohmynews.com/down/etc/1/_386111_1[1].pdf), last accessed on 19 November 2011

56 The "Letter to UN Security Council Member States by PSPD" dated 10 June 2010 which can be seen in the following link:
<http://www.ncnk.org/resources/publications/Letter%20to%20UNSC%20by%20PSPD%20June%202010.pdf> , last accessed on 14 September 2012

57 Ibid

58 "Civic Group Faces Investigation over Cheonan Letter to UNSC", The Korea Times, 15 June 2010, http://www.koreatimes.co.kr/www/news/nation/2010/06/113_67699.html; "GNP Urges Legal Action on NGO Sending Letter to UN", The Korea Times, 17 June 2010, http://www.koreatimes.co.kr/www/news/nation/2010/06/116_67840.html, "Government Goes after Critical Civic Group", JoongAng Daily, 18 June 2010, <http://joongAngdaily.joins.com/article/view.asp?aid=2922019>; "Far-Right Groups Launch Violent Protests against PSPD", The Hankyoreh, 18 June 2010, http://english.hani.co.kr/arti/english_edition/e_national/426298.html

59 AI Interview, 15 November 2011

60 AI interview with Ms K, 15 November 2011

61 The Hankyoreh Newspaper, 24 March 2011 http://english.hani.co.kr/arti/english_edition/e_national/469688.html last accessed on 20 November 2011.

62 The Hankyoreh Newspaper, 24 March 2011.

63 AI Interview with Lawyer Kim, defence lawyer for the Socialist Workers League, on 18 November 2010.

64 The eight members charged in this case are the main officials of the Socialist Workers League: Prof Oh Se-chul (born 1943), Yang Hyo-shik (born 1959), Nam Koong-won (born 1966), Yang Jun-seok (born 1967), Park Jun-seong (born 1971), Oh Min-kyu (born 1973), Choi Young-ik (born 1967) and Chung Won-hyun (born 1969).

65 AI Interview with Kim Youngsoo in November 2011.

66 On 16 May 1997, the South Korean Supreme Court ruled that Beomminyeon was an 'enemy benefiting' organization violating Article 7 of the National Security Law. The prosecutors did not pursue Beomminyeon nor its staff members because between 1998 and 2007 as South Korea was ruled by liberal Presidents Kim Dae-jung and Roh Moo-hyun (1997/8 - 2007/8) who were for engaging with North Korea. The prosecutors were quietly collecting evidence and now have come down heavily on the Beomminyeon under the conservative Lee Myung-bak (2008 -2012) presidency that has a hard-line policy on North Korea.

67 This included the NIS recording all conversations between Lee Kyung-Won and others when it was seen to be linked to the National Security Law. They also traced all mobile phones used by Lee Kyung-won, analyzing all call histories including international phone calls and real-time tracing on the current location of the phone.

68 The existence of the internet 'packet tapping' (monitoring) was revealed when an employee at the internet service company signed on to the Restrictions on Communication Order. The NIS tapped into/monitored all e-mail accounts that Lee Kyung-Won used including tracing IP Log, mailbox of the account.

69 The NIS checked all postal mail received by and sent by Lee Kyung-won. They took photographs and submitted them to their senior officials in the NIS.

70 Telecom Restriction Permit #5239-27 July 2004

71 Article 6, Clause 7 of the Communications Secrets Act states, "The period of communication-restricting measures shall not exceed 2 months and in the event that the objective of the communication-restricting measures is attained during the period, such communication-restricting measures shall be immediately discontinued: Provided, That if the requirements for permission under Article 5 (1) are still valid, a request for extending the period of communication-restricting measures pursuant to paragraphs (1) and (2) may be filed, within the limit of 2 months and such request shall be appended by material establishing a prima facie case. <Amended by Act

No. 6546, Dec. 29, 2001>"

72Suspension of qualification is a punishment that accompanies a prison sentence. During the period of the sentence, the person – (a) loses his/her right to apply for or work/serve as a public official; (b)to be elected to public office; (c) to work in an executive position or as an auditor in an organization.

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