



**Australian Government**  
**Refugee Review Tribunal**

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# Country Advice

## South Korea

South Korea – KOR37760 – Defamation  
law – Intellectual property law –  
Communist sympathisers – National  
Security Law – Corruption – Police

23 November 2010

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### 1. Please provide information about intellectual property law in South Korea.

#### a) Is it a civil or criminal matter?

Intellectual Property law exists across administrative, civil and criminal jurisdictions, depending on the nature and status of the matter. The Korean Intellectual Property Office (KIPO) is “the major governmental authority in charge of intellectual property (IP) matters in Korea.”<sup>1</sup> The KIPO administers Korea’s Industrial Property laws under a legislative framework which includes the *Patent Act (1949)*<sup>2</sup>; the *Utility Model Act (1961)*<sup>3</sup>; and the *Trademark Act (1949)*.<sup>4</sup>

For civil matters, the KIPO describes a “Three-Instance Patent Litigation System”. This means that the matter is first heard by the Intellectual Property Tribunal (administrative jurisdiction); and appeals from the Tribunal are made at the Patent Court and then Supreme Court (civil jurisdiction).<sup>5</sup>

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<sup>1</sup> ‘Welcome to KIPO’, 2010, *Korean Intellectual Property Organisation* website, May [http://www.kipo.go.kr/kpo2/user.tdf?a=user.english.html.HtmlApp&c=10101&catmenu=ek01\\_01\\_01#](http://www.kipo.go.kr/kpo2/user.tdf?a=user.english.html.HtmlApp&c=10101&catmenu=ek01_01_01#) - Accessed 24 November 2010, Attachment 1

<sup>2</sup> ‘Understanding the Patent Act of South Korea’ undated, *Korean Intellectual Property Organisation* website, [http://www.kipo.go.kr/upload/en/download/Understanding\\_the\\_Patent\\_Act\\_of\\_the\\_Republic\\_of\\_Korea.pdf](http://www.kipo.go.kr/upload/en/download/Understanding_the_Patent_Act_of_the_Republic_of_Korea.pdf) - Accessed 24 November 2010, Attachment 2 ; see also *Patent Act (1949)* (Republic of Korea) <http://www.kipo.go.kr/upload/en/download/PatentAct.pdf> - Accessed 24 November 2010.

<sup>3</sup> ‘Industrial Property Laws’ undated, *Korean Intellectual Property Organisation* website, [http://www.kipo.go.kr/kpo2/user.tdf?a=user.english.html.HtmlApp&c=96022&catmenu=ek07\\_02\\_01\\_02](http://www.kipo.go.kr/kpo2/user.tdf?a=user.english.html.HtmlApp&c=96022&catmenu=ek07_02_01_02) - Accessed 26 November 2010 Attachment 3; see also *Utility Model Act* <http://www.kipo.go.kr/upload/en/download/UtilityModelAct.pdf> - Accessed 24 November 2010.

<sup>4</sup> Korean Intellectual Property Office 2007, ‘Industrial Property Laws of the Republic of Korea’ [http://www.kipo.go.kr/upload/en/download/INDUSTRIAL\\_PROPERTY\\_LAWS\\_OF\\_THE\\_REPUBLIC\\_KOR\\_EA.PDF](http://www.kipo.go.kr/upload/en/download/INDUSTRIAL_PROPERTY_LAWS_OF_THE_REPUBLIC_KOR_EA.PDF) - Accessed 24 November 2010.

<sup>5</sup> Korean Intellectual Property Office 2010, ‘Appeals and Trials’, *Korean Intellectual Property Organisation* website, 8 November, [http://www.kipo.go.kr/kpo2/user.tdf?a=user.english.html.HtmlApp&c=30300&catmenu=ek03\\_06\\_01#](http://www.kipo.go.kr/kpo2/user.tdf?a=user.english.html.HtmlApp&c=30300&catmenu=ek03_06_01#) - Accessed 23 November 2010, Attachment 4

Criminal prosecution is possible “based on Article 225 of the Patent Act (infringement, perjury, false representation, fraud and divulging of secret [sic])”.<sup>6</sup> KIPO also conducts “offline investigations to help track down and put a stop to the manufacture, circulation and sale of counterfeit products because they usually result in unfair competition practices. To fight [the] rapid increase in the circulation of counterfeit products, KIPO monitors the channels and transfers their investigation to the police.”<sup>7</sup>

## b) Is it regarded as being fair?

Research on the nature and quality of the Korean Intellectual Property regime suggests that the legislative framework and its implementation are well regarded internationally. No English language reports were located during the preparation of this research which were critical of the Korean system of IP protection.

Significantly, South Korea has acceded to the *World Intellectual Property Organisation Convention 1979* (the WIPO Convention), as well as a series of complimentary international agreements relating to intellectual property<sup>8</sup> managed by WIPO, including the *WIPO Copyright Treaty*, and the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (collectively, the Madrid Agreement, and the Madrid Protocol are referred to as “the Madrid System”).<sup>9</sup> WIPO explains that the Madrid System aims to “facilitate the obtaining of protection for marks (trademarks and service marks)”, and facilitate the international registration, management and protection of intellectual property.<sup>10</sup>

The United States of America signed a free trade agreement with South Korea in 2007 which at the time of writing, had not been ratified by the parliaments of either country – the agreement stalled over automobile manufacturing and the importing of American beef into South Korea. Nevertheless, the *American Journal of International Law* in October 2007 quoted a press release from the American Government which stated that the

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<sup>6</sup> ‘Understanding the Patent Act of South Korea’ undated, *Korean Intellectual Property Organisation* website, [http://www.kipo.go.kr/upload/en/download/Understanding\\_the\\_Patent\\_Act\\_of\\_the\\_Republic\\_of\\_Korea.pdf](http://www.kipo.go.kr/upload/en/download/Understanding_the_Patent_Act_of_the_Republic_of_Korea.pdf) - Accessed 24 November 2010, Attachment 2

<sup>7</sup> Government of the United States of America undated, ‘Korea: Protecting your intellectual property rights (IPR)’ *BuyUSA.gov* website, <http://www.buyusa.gov/korea/en/ipoverview.html#print=1> - Accessed 23 November 2010, Attachment 5

<sup>8</sup> Listed here with accession dates: World Intellectual Property Organisation undated, , ‘Contracting Parties: Republic of Korea’, *WIPO website*, [http://www.wipo.int/treaties/en/ShowResults.jsp?country\\_id=95C&start\\_year=ANY&end\\_year=ANY&search\\_what=C&treaty\\_all=ALL](http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=95C&start_year=ANY&end_year=ANY&search_what=C&treaty_all=ALL) - Accessed 25 November 2010, Attachment 6

<sup>9</sup> The World Intellectual Property Organisation was recognised as a specialised agency of the United Nations system of organisations in 1974, with a mandate to administer intellectual property matters recognised by member states of the UN. In 1996, the WIPO entered into a cooperation agreement with the World Trade Organisation. Further information on the WIPO can be found at World Intellectual Property Organisation, undated, ‘WIPO Treaties – General Information Major Events 1883 – 2002’, <http://www.wipo.int/treaties/en/general/> - Accessed 26 November 2010, Attachment 7 ; and *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, Adopted 27 June 1989, as amended 3 October 2006 and 12 November 2007, World Intellectual Property Organisation website, [http://www.wipo.int/export/sites/www/madrid/en/legal\\_texts/pdf/madrid\\_protocol.pdf](http://www.wipo.int/export/sites/www/madrid/en/legal_texts/pdf/madrid_protocol.pdf) - Accessed 25 November 2010, Attachment 8

<sup>10</sup> World Intellectual Property Organisation 2010, ‘The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement: Objectives, Main Features, Advantages’, WIPO Publication No. 418(E), <http://www.wipo.int/madrid/en/general/#objectives> - Accessed 25 November 2010, Attachment 9

agreement “provides high standards for protection and enforcement of intellectual property rights, including trademarks, copyrights and patents, consistent with US standards.”<sup>11</sup>

## **2. Does Korean defamation law allow for individuals to be charged with defaming public officials or organisations?**

South Korean defamation law protects the constitutional right of *individuals* against abuses of the right to freedom of expression.<sup>12</sup> Sanctions for defaming any individual, including government and other public officials are available under both civil and criminal legislation. In Korea, “[d]efamation is a criminal offence under Article 307 of the *Criminal Code*, and an ‘unlawful act’ under the *Civil Code*”.<sup>13</sup>

### *Criminal Code*

#### *Article 307*

- 1) A person who defames another by publically alleging facts shall be punished by imprisonment with or without prison labor for not more than 2 years or by a fine not exceeding 5 million *won* [US\$4167];
- 2) A person who defames another by publically alleging false facts shall be punished by imprisonment with prison labour for not more than 5 years, suspension of civil rights for not more than 10 years, or a fine not exceeding 10 million *won* [US\$8334]

#### *Article 309*

- 1) A person who, with intent to defame another, commits the crime of Article 307(1), by means of newspaper, magazine, radio, or other publication, shall be punished by imprisonment without labour for not more than 3 years or a fine not exceeding 7 million *won*. [US\$6251]
- 2) A person who committed the crime of Article 307(2), by the method described in paragraph (1), shall be punished by imprisonment for not more than 7 years, suspension of civil rights for not more than 10 years, or a fine not exceeding 15 million *won* [US\$12, 501]

The sharp increase in defamation and related cases in Korea should be understood in the context of the South Korean government’s unprecedented regulation of public speech, online, in the printed press, and through peaceful public demonstrations. In an article for *the Media and Arts Law Review* in 2004, Kyu Ho Youm explains:

While lawsuits against the press for libel had been a rarity in Korea up to 1980, the number of suits against Korean news media for libel and related complaints has increased exponentially during the past 10 years... with the breathtaking growth of

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<sup>11</sup> ‘United States and South Korea Sign Major Free Trade Agreement: Prospects Uncertain’ 2007, *The American Journal of International Law*, October, Vol. 101, No. 4, American Society of International Law, Attachment 10

<sup>12</sup> Youm, K. H. 2004, ‘Defamation Law and the Internet in South Korea’, *Media & Arts Law Review*, No. 9, p. 142, Attachment 11

<sup>13</sup> Further discussion of the criminal and civil framework for defamation law in Korea can be found in Youm, K. H. 2004, ‘Defamation Law and the Internet in South Korea’, *Media & Arts Law Review*, No. 9, p. 142, Attachment 11

the internet, defamation in cyberspace has emerged as a pressing legal issue in Korea... Cyber libel of government officials, business executives, law makers, and labour unionists has been increasing sharply.<sup>14</sup>

In a well publicised 2009 instance, four producers and a writer working for an investigative news program were charged with defamation for “defaming two former senior government officials ... and ‘obstructing the commercial activities of certain US beef import companies by disseminating false information’”.<sup>15</sup>

Country Advice KOR37047 (August 2010), provides the further contextual information on the limitations of free speech in Korea and the use of defamation laws to curb press and individuals critical of the government. As no further reports were located in the period August – November 2010, an excerpt from Country Advice KOR37047 is provided:

The Government restricts freedom of speech including in relation to criticism of the Government or Government figures. South Korean law provides for freedom of speech and of the press and, according to the US Department of State (US DOS) in a 2010 report, the Government generally respected these rights in practice. The US DOS credited this to an “independent press, an effective judiciary, and a functioning democratic political system”. It was claimed that there was an independent media which expressed a variety of views “generally without restriction”.<sup>16</sup>

Despite this, there were numerous reports from several sources of restrictions on freedom of speech. The US DOS mentioned that the National Security Law (NSL) may limit the expression of ideas that either praise or incite the activities of “antistate individuals or groups”. Reporters Without Borders (RWB) states that it is impossible to view North Korean media and to publish any comments favourable to that regime under the NSL.<sup>17</sup> Amnesty International reported that in March 2009, four journalists and union activists were arrested for calling for guarantees of editorial independence after the appointment of a former aide to President Lee Myung-bak as the head of their television station. RWB and Amnesty International cited the case of five people involved in a television program who were arrested and charged with “spreading false rumours about the alleged health risks of eating US beef”.<sup>18</sup> During the large US beef import protests that occurred in 2008, accusations of bias levelled by President Lee Myung-bak against two television channels led to pressure for the head of one channel to resign. The chairman of Korea Commission for the Press, alleged that the President’s “way of thinking about the press is to use it as a tool to control public opinion”.<sup>19</sup>

The restrictions include those on freedom of expression on the internet. South Korea is reported as being the only democracy to censor its internet to such a

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<sup>14</sup> Youm, K. H. 2004, ‘Defamation Law and the Internet in South Korea’, *Media & Arts Law Review*, No. 9, p. 142, Attachment 11

<sup>15</sup> Reporters Without Borders 2009, *Trial of MBC producers on defamation charges is "act of revenge"*, 9 September, available at: <http://www.unhcr.org/refworld/docid/4aae3ff8c.html> - Accessed 23 November 2010, Attachment 12

<sup>16</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Attachment 13

<sup>17</sup> Reporters Without Borders 2009, *World Report 2009 - South Korea*, Refworld website, 1 May <http://www.unhcr.org/refworld/country.COI.RSF.,KOR.,49fea98ea.0.html> – Accessed 15 June 2010, Attachment 14

<sup>18</sup> Amnesty International 2010, *Amnesty International Report 2010 – Korea (Republic Of)*, Attachment 15; and ‘Journalists’ arrests threaten press freedom’ 2009, *Amnesty International*, 25 March, Attachment 16

<sup>19</sup> ‘Mad as hell’ 2008, *The Economist*, 31 July, Attachment 17

severe extent. According to an October 2009 article in the *Asia-Pacific Journal on Human Rights and the Law*, the country's level of internet censorship is similar to that of authoritarian regimes. It is the only democracy on the *OpenNet Initiative's* list of regimes that engages in "substantial" censorship of the internet.<sup>20</sup> Korea has also been placed on Reporters Without Borders' list of "countries under surveillance".<sup>21</sup> Though controversial, internet censorship has endured through Korean Governments of both the Left and the Right:

Its government maintains a large, sophisticated Internet censorship operation that blocks foreign websites, monitors domestic hosting services for banned content, and employs over a thousand people as censors prior to national elections. Many of these restrictions have been in place now for over a decade, and while unpopular, show no signs of disappearing.<sup>22</sup>

Politically sensitive websites which are related to perceived threats to national security and public order are censored. These include sites considered sympathetic to North Korea.<sup>23</sup> The Government even censors sites related to political debate. Harsh censorship by the National Election Commission during elections was said to discourage many internet users and bloggers from commenting online.<sup>24</sup>

Restrictions on freedom of expression by the current Government are said to be increasing. In 2009 Amnesty International's Asia-Pacific Programme Deputy Director described it as "an increasingly concerted effort by the Government to control South Korea's media".<sup>25</sup>

Restrictions are also being increasingly enforced under the current Government according to NGOs from the Korean Network for International Human Rights and the Korea Press Consumerism Organization,<sup>26</sup> as well as Reporters Without Borders (RWB). This includes criminal punishment for "false communication, defamation, and other violations for online writers", particularly related to the 2008 protests against US beef imports. Ordinary users can be arrested for their internet posts.

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<sup>20</sup> Fish, E. 2009 'Is Internet Censorship Compatible with Democracy?: Legal Restrictions of Online Speech in South Korea', *Asia-Pacific Journal on Human Rights and the Law*, vol. 2, p44, 15 October

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1489621](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1489621) – Accessed 15 June 2010, Attachment 18

<sup>21</sup> Reporters Without Borders 2009, *World Report 2009 - South Korea*, Refworld website, 1 May

<http://www.unhcr.org/refworld/country,COI,RSF,,KOR,,49fea98ea,0.html> – Accessed 15 June 2010, Attachment 14

<sup>22</sup> Reporters Without Borders 2009, *World Report 2009 - South Korea*, Refworld website, 1 May

<http://www.unhcr.org/refworld/country,COI,RSF,,KOR,,49fea98ea,0.html> – Accessed 15 June 2010, Attachment 14

<sup>23</sup> Reporters Without Borders 2009, *World Report 2009 - South Korea*, Refworld website, 1 May

<http://www.unhcr.org/refworld/country,COI,RSF,,KOR,,49fea98ea,0.html> – Accessed 15 June 2010, Attachment 14

<sup>24</sup> So-young, S. 2007 'Tough content rules mute Internet election activity in current contest', *JoongAng Daily*, 17 December <http://joongangdaily.joins.com/article/view.asp?aid=2883992> Accessed 15 June 2010, Attachment 19

<sup>25</sup> 'Journalists' arrests threaten press freedom' 2009, *Amnesty International*, 25 March – Attachment 20

<sup>26</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Section 2, Attachment 11

There is strong evidence that the Government monitors the internet in line with its overall censorship of free speech. In a 2009 report, RWB states that the Government has put in place the means to scrutinise online news content.<sup>27</sup>

... [I]nternet monitoring fits in with the overall monitoring of private communications that the Government was said to engage in. Freedom House indicates that this monitoring is legal under certain conditions set out in the *Anti-Wiretap Law*. It adds that “political and business elites often carry two cell phones and change their numbers frequently to evade what they perceive as intrusive Government eavesdropping”.<sup>28</sup>

This [extensive government] monitoring has led to people being punished for material they have published on the internet. RWB reports that “scores of Internet users” had been arrested following complaints from the Government or by individuals.<sup>29</sup> According to US DOS the South Korean Ministry of Justice had admitted that 15 bloggers had been convicted for “interfering with local business” after they encouraged people to boycott Korea’s top newspapers, which are said to support the current Government. By the end of 2009 more cases were awaiting trial.<sup>30</sup> In January 2009 there was the widely publicised arrest of the internet blogger ‘Minerva’, real name Park Dae-sung. Dae-sung was arrested on the grounds that he had violated the *Framework Act on Telecommunications* through his posts on the financial crisis.<sup>31</sup> He was accused of “spreading malicious rumours to destabilize the economy” through affecting “foreign exchange markets” and “undermining the nation’s credibility”.<sup>32</sup> Though this did not criticise the Government directly, Dae-sung’s material cast a negative light on the Government’s economic management. The blogger was ultimately acquitted in April 2009 by a court which reasoned that he had not intended to damage the public interest.<sup>33</sup> The National Human Rights Commission (NHRC) had asked the Government to review the constitutionality of the law used to arrest Dae-sung.<sup>34</sup>

### 3. Would reports of police misconduct be acted on by authorities?

South Korea has enacted laws which provide protection for detainees against police misconduct, and generally, these provisions are adhered to. Nevertheless, reports of brutality and mistreatment by police continue to surface, in part due the new petition

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<sup>27</sup> Reporters Without Borders 2009, *World Report 2009 - South Korea*, Refworld website, 1 May <http://www.unhcr.org/refworld/country.COI.RSF.KOR..49fea98ea.0.html> – Accessed 15 June 2010, Attachment 14

<sup>28</sup> Freedom House 2009, *Freedom in the World Country Report - South Korea 2009*, 17 July, Attachment 21

<sup>29</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Section 2 – Attachment 13

<sup>30</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Section 2 – Attachment 13

<sup>31</sup> Amnesty International 2010, *Amnesty International Report 2010 – Korea (Republic Of)*, Attachment 15

<sup>32</sup> Fish, E. 2009 ‘Is Internet Censorship Compatible with Democracy?: Legal Restrictions of Online Speech in South Korea’, *Asia-Pacific Journal on Human Rights and the Law*, vol. 2, p86, 15 October [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1489621](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1489621) – Accessed 15 June 2010 – Attachment 18; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Section 2 – Attachment 13

<sup>33</sup> Fish, E. 2009 ‘Is Internet Censorship Compatible with Democracy?: Legal Restrictions of Online Speech in South Korea’, *Asia-Pacific Journal on Human Rights and the Law*, vol. 2, p. 86, 15 October [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1489621](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1489621) – Accessed 15 June 2010, Attachment 18

<sup>34</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Attachment 13

mechanism to record complaints against prison officers. Few reports were located which discussed the treatment of police found to have mistreated detainees or interviewees.

The two reports located which dealt with the ramifications for police who mistreated protestors, are discussed in Country Advice KOR37047 (August 2010). No further reports were found.

South Koreans have some freedoms to participate in anti-Government demonstrations, but these are limited ... [the Government] prohibits assemblies that are thought likely to “undermine public order” and requires police to be notified in advance of demonstrations, including political rallies. It was reported that police generally approved demonstrations but some groups were banned from protesting due to not having registered properly or being known for past violent demonstrations ...

Police were said to use excessive force in responding to protests. In January 2009 police tried to forcibly remove 40 protesting squatters from a building which resulted in five squatters and one policeman being killed. NGOs accused police of excessive force and neglecting to take proper safety precautions. It is worth noting that the President did remove a police chief deemed as being too hard on anti-Government demonstrators in this incident.<sup>35</sup> Furthermore, the Ministry of Justice confirmed that none of the 24 riot police accused of excessive violence during the 2008 beef protests had yet been arrested.<sup>36</sup>

Country Advice KOR36841 (June 2010) provides further information on the treatment of detainees by police:

The law prohibits mistreatment of detained suspects by authorities, and according to the US DOS’s report on the events of 2009, officials generally observe this prohibition in practice. The report adds that prison and detention centre conditions usually met international standards. The government permits monitoring visits by independent human rights observers, and such visits had occurred during 2009.

[If a person is] interviewed, according to the law, he may not be arbitrarily arrested or detained. The law requires warrants for arrest, detention, seizure, or search. The US DOS advised that authorities observed this law in practice. There was, however, an exception if the applicant was considered to be someone who “commit[s] acts the government views as intended to endanger the ‘security of the state’”. In this case, according to the National Security Law (NSL), the authorities have power to arrest, detain and imprison someone. Incidents of this type of arrest have reportedly dropped in recent years. If the ‘interview’ is an interrogation, the law indicates the applicant has a right to representation by a lawyer. The US DOS adds that courts generally observe the suspect’s right to a lawyer both during arrest and detention periods.<sup>37</sup>

There were complaints of abuse by prisoners and detainees. Making use of a new petition system that makes it less difficult for detainees to formally accuse prison officials of abuse, 449 petitions were filed by prisoners as of October 2009. At the

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<sup>35</sup> ‘Deadly Seoul clash sparks inquiry’ 2009, *BBC*, 20 January, Attachment 22

<sup>36</sup> ‘Deadly Seoul clash sparks inquiry’ 2009, *BBC*, 20 January, Attachment 22

<sup>37</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Section 2, Attachment 13

same time there were 297 petitions filed alleging human rights violations by detention facility officials of a total prison population of 48,228.<sup>38</sup>

It is worth noting that Korean police have a past history of using excessive force, mainly during the Rhee, Park, and Chun regimes prior to the transition to democratic rule in 1987.<sup>39</sup>

#### **4. Are there reports about corrupt associations between law firms and police, prosecutors and judges in Korea?**

No English language reports were located during the research for this response which specifically discussed corrupt associations between law firms, police, prosecutors and judges in Korea, although bribery, undue influence, and extortion have not been completely eradicated from the South Korean political system.

It should be noted that prosecutions for cyber defamation are increasing in South Korea, and it is possible that publically available sources claiming corruption and bribery within and between the legal profession and the police are scarce, given the Government's active interest in policing electronic communications.

In 2010, Freedom House noted that South Korea was ranked 39 out of 180 countries surveyed in Transparency International's 2009 Corruption Perceptions Index.<sup>40</sup> Freedom House goes on to observe that,

[d]espite the overall health of the South Korean political system, bribery, influence peddling, and extortion by officials have not been eradicated from politics, business, and everyday life [and in] 2009, President Lee Myung-bak made anticorruption efforts a top administrative priority, particularly in the defense sector. Former president Roh Moo-hyun came under investigation in April for soliciting approximately \$6 million from a shoe manufacturer while in office, driving the humiliated former leader to take his own life in May.<sup>41</sup>

#### **5. Deleted.**

#### **6. Are there any reports of police using the NSL to target individuals who have been critical of them?**

Yes. The National Security Law appears to be utilised predominately to quash the expression of communist or anti-government sentiments in South Korea. Protesters critical of the South Korean government have been accused by government officials of having communist sympathies, and of being supporters of North Korea. As Country Advice KOR37047 (August 2010) explains, the National Security Law,

grants authorities powers to detain, arrest, and imprison persons who commit acts the Government views as intended to endanger the "security of the state". NGOs

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<sup>38</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Republic of Korea*, February, Attachment 13

<sup>39</sup> Library of Congress 1992, *Intelligence Agencies South Korea – A Country Study*, Attachment 23 ; see also Larkin, John 1999, 'Reforming the 'KCIA'', *AsiaWeek*, 16 July <http://www-cgi.cnn.com/ASIANOW/asiaweek/99/0716/nat8.html> – Accessed 15 June 2010, Attachment 24

<sup>40</sup> Freedom House 2009, *Freedom in the World Country Report - South Korea 2009*, 17 July, Attachment 21

<sup>41</sup> Freedom House 2009, *Freedom in the World Country Report - South Korea 2009*, 17 July, Attachment 21



have called for abolition of the law, criticising it for its ambiguous definition of prohibited activity. However, the Ministry of Justice (MOJ) claimed that this was no longer an issue as courts had established legal precedents for strict interpretation of the law that prevent its arbitrary application.<sup>24</sup>

Country Advice KOR37047 (August 2010) also provides the following information on the National Security Law in South Korea:

Much of the targeting of people who may have socialist or communist sympathies occurs under the aforementioned National Security Law (NSL).<sup>24</sup> Freedom House believes that this extends to the restriction of academic freedom when it involves pro-Communist comments or statements of support for North Korea.<sup>42</sup> In 2004 a South Korean-born German scholar was charged under the law for his alleged connections with communist North Korea.<sup>43</sup>

In 2009, 34 people were arrested for violating the NSL. In June that year, North Korean news decried the arrest of the chairman of the South Korean Federation of University Student Councils (Hanchongryon) who was charged with violation of the law. It is likely the chairman had sympathies for the North as he was described by the North as a 'patriotic youth'. The South Side Committee for Implementing June 15 Joint Declaration, a movement supporting reunification and seen as sympathetic to North Korea was also investigated by the Intelligence Services during June 2009.<sup>44</sup> Four members of an NGO were charged in 2008 for "illegal contact" with North Korean agents and distribution of North Korean press material for the purpose of "exalting DPRK leader Kim Jong-il".<sup>45</sup>

## **7. Is there any evidence of discrimination in the community of people suspected of having communist sympathies?**

No sources were located which provided information of community attitudes towards people with communist sympathies. Some sources provided information on the attitude to public officials towards protestors, and critics of the South Korean government. The extent to which these expressions by officials reflect the views of the South Korean public is unclear.

Authorities have targeted people who are imputed to have socialist or communist sympathies. This has usually been due to socialist beliefs in South Korea often equating with support for North Korea.

The Korean news service *Yonhap News Agency*, reported in July 2010 that a "senior S. Korean official, in unprecedentedly [sic] vitriolic remarks toward the country's left-leaning youths, told them to "go live in North Korea" if they are critical of Seoul's hard-line policy against its communist neighbor."<sup>46</sup>

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<sup>42</sup> Freedom House 2009, *Freedom in the World Country Report - South Korea 2009*, 17 July, Attachment 21

<sup>43</sup> 'SOUTH KOREAN PROSECUTORS URGE 15-YEAR JAIL TERM FOR DISSIDENT PROFESSOR' 2004, *Yonhap news agency*, 9 March, Attachment 28

<sup>44</sup> 'Suppression of reunification movement flayed' 2009, *Korean Central News Agency (KCNA) -North Korea*, 30 June, Attachment 29

<sup>45</sup> Freedom House 2009, *Freedom in the World Country Report - South Korea 2009*, 17 July, Attachment 21

<sup>46</sup> 'Senior S. Korean official tells left-leaning students to 'go live in North Korea' 2010, *Yonhap News Agency*, 26 July,

<http://english.yonhapnews.co.kr/news/2010/07/26/0200000000AEN20100726001700315.HTML> - Accessed 25 November 2010, Attachment 30

An article from the Korean news service *Yonhap News* reported in 2009 that South Korean military had accepted responsibility for the deaths of Jehovah's Witnesses in the military, and the subsequent option for Jehovah's witnesses to choose jail time rather than compulsory military service was "a sign that the anti-communism that once dominated South Korean society has relaxed."<sup>47</sup>

## Attachments

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