
CHAPTER 4

JUSTIFICATION FOR THE REPEAL OF THE NATIONAL SECURITY LAW

During the discussions in previous chapters about the process of enactment and subsequent revisions of the NSL, the anti-democratic character and the anti-human rights structure of the NSL were briefly examined. Also, the history and examples of how the NSL violated basic human rights in its actual and specific applications were examined. The reasons provided in previous chapters give enough justification for the repeal of the NSL. In this chapter we will examine few more reasons and arguments for repealing the NSL.

In view of the historical progress being made between South and North Korea, the need for the NSL no longer exists. The existence of the NSL had been historically justified in the context of alleged North Korean threat. However, continuing improvements in relations and expansion of exchanges between South and North Korea have dramatically diminished the usefulness of the NSL. Nevertheless, the South Korean government continues to insist that the threat from the North is

still viable, when confronted with the issue of repealing the NSL. It should be pointed out that, other than the NSL, there are many other criminal laws that can be implemented as an alternative in responding to the alleged North Korean threat.

Government officials also insist that the NSL is not unique to South Korea, and that similar laws are found in advanced Western countries where democracy is well established. Yet, security-related laws found in these countries differ greatly from the NSL in substance. The security-related laws of these countries teach us how to enact and implement laws that protect the national security, without violating individual's basic rights.

The problems of the NSL have now become well publicized internationally. It has been reviewed at various international meetings and also at the U.N. Human Rights Committee meetings. The conclusion reached at these meetings was that the NSL violated not only the International Covenant on Civil and Political Rights, but also the norms of the International Human Rights Law.

Finally, the Korean people who are subject to obey this law, want the NSL abolished. Various public polls support this fact.

SOUTH-NORTH RELATIONSHIP AND THE NSL

(1) The Changing South-North Relationship

As the Cold War ended throughout the world, its ramifications were felt in the Korean Peninsula. In response to global changes, the South Korean government moved quickly to improve its relations with North Korea. During the Roh Tae Woo presidency, the South Korean government initiated the so-called "Northward Diplomacy" and engaged in diplomatic exchanges not only with North Korea, but also with other

socialist countries such as the former Soviet Union and China.

During this process, South Korea first established its diplomatic relations with Hungary on February 1, 1989,¹ and went on to establish diplomatic relations with the former Soviet Union and with other Eastern bloc countries, and increased the volume of the trade with these countries.² South Korea also achieved comparative diplomatic progress with respect to its relations with North Korea.

In 1988, President Roh Tae Woo provided a framework for these policy changes toward North Korea through the July 7th Declaration. Roh pledged that he would iron out the antagonistic relations with North Korea and transform South-North relations, so that both countries can prosper together as one national entity. Since the Declaration, many new diplomatic policies have been proclaimed and implemented by various administrative branches of the South Korean government toward fulfilling the objectives outlined in the Declaration.

For example, on October 7, 1988, the Minister of Economic Planning announced that the South Korean government would permit private firms to engage in direct exchange of goods and materials with North Korea or intermediate trade via a third country, and also permit South and North Korean businessmen to meet and visit each other and North Korean ships to enter into South Korean ports. Accordingly, meetings among businessmen, journalists, and academic scholars ensued and direct trade between South and

¹ Normalization of relations with these States occurred on the following dates:

| | |
|----------------|----------------------|
| U.S.S.R. | : September 30, 1990 |
| Hungary | : February 1, 1989 |
| Poland | : November 1, 1989 |
| Yugoslavia | : December 27, 1989 |
| Romania | : March 30, 1990 |
| Czechoslovakia | : March 22, 1990 |
| Bulgaria | : March 23, 1990 |

² As of 1990, the amount of trade with what used to be the Soviet Union, China, and Eastern bloc accounted for 5.6 billion dollars, increase of 33% over the past year. The trend is for continued increase. (International Civil Economics Council, *North Economics*, March 1991, p.154)

North also increased significantly.³

(2) Contradiction Between the Progress in South-North Relations and the NSL

The aforementioned achievements in South-North relations are, in strict legal interpretation, violations of the NSL. We have elucidated the character of the NSL which absolutely prohibits all contacts and trade with North Korea and outlaws all activities that may benefit North Korea. Therefore, such achievements undoubtedly violate the NSL. Furthermore, considering that vast cases of NSL violations consist of minor charges such as possessing illegal literature and praising North Korea while under the influence of alcohol, the activities undertaken with the initiative of the South Korean government in fact produce much more significant benefits to North Korea both diplomatically and economically. Needless to say, the government's actions constitute the most serious violations of the NSL. In other words, genuine improvement in the relations with North Korea is impossible without violating the NSL.

The South Korean government initially attempted to explain this contradictory situation with a doctrine known as "acts of governing." It argued that contacts or exchanges between South and North Korea require guarded political decisions by the President, and, therefore, the government's actions are exempt from judicial scrutiny. Yet, the principle of constitutional legality stipulates that no citizen, including the President, is immune from the law. Moreover, as South-North exchanges expanded to include, among others, trade by private businessmen and exchange of athletic events, such actions explained as "acts of governing" became untenable.

³ The approvals for receipt of goods accounted for 35 million dollars, and that for dispatch accounted for 160,000 dollars during the period from October 7, 1988 to September 30, 1990. (National Reunification Board, *The White Paper on Reunification 1990*, p. 194)

(3) The Enactment of the Law on Cooperation and Exchange Between South and North

Upon facing the complex situation of legal inconsistency, South Korean government eventually introduced a legislation, named "the Law on Cooperation and Exchange between South and North" (LCE) on July 15, 1990.⁴ Admittedly, the government and ruling party had shared "the necessity of providing temporary measure that facilitates exchanges between South and North without being subject to punishment under the NSL."⁵ The major components of this law are as follows:

1. Article 1 defines the area south of the demilitarized zone (DMZ) as "South Korea", and north to be "North Korea." The main stated purpose of the law is to promote exchanges and cooperation.
2. Article 3 proclaims that this law supersedes any other existing legislation when applied to the matters relating to exchanges and cooperation.
3. Article 4 and Article 8 authorize the formation and management of the Committee on Cooperative Relations between South and North.

⁴ This law was passed in the National Assembly on July 15, 1990 together with "The Law on National Defense Organization" and "The Law on Kwang-Ju Compensation" in the absence of opposition party (Party for Peace and Democracy) Assembly person. Due to this illegitimate nature (the opposition Assembly persons were physically barred from entering the Assembly Hall), this new law bears a resemblance to the NSL.

⁵ *Cho-sun Ilbo*, Jan 11, 1989

4. Article 9 requires citizens of South and North Korea to obtain permission cards from the National Reunification Board on their intent to travel between south and north. Meeting, communicating or establishing liaison by any other means is subject to prior approval by the Minister of National Reunification Board.
5. Articles 12 through 14 define those eligible for trade between South and North as persons with prior permission from either the State, local government, State-owned corporations, or trading corporations. It also limits the goods to be received and sent, and requires prior permission from the Minister of National Reunification Board in the structure of transaction and methods of payment.
6. Article 17 states that the residents of South and North Korea may participate in cooperative activities of cultural, athletic, academic, and commercial exchanges upon receiving permission from the Minister of the National Reunification Board.
7. Article 27 and Article 29 specify that a person who travels between South and North Korea, trades goods, participates in cultural and athletic activities between South and North Korea are subject to punishment if such act is carried out without appropriate permission.

The Law on Cooperation and Exchange between South and North provided a legal basis for "acts of governing." Yet, it did not resolve all the issues.

(4) Conflict between the National Security Law (NSL) and the Law on Cooperation and Exchange between South and North (LCE), and the Principle of Constitutional Legality

Although the LCE was enacted, the NSL remains intact and these two conflicting laws began their impossible co-existence. The definition of South Korea and North Korea as stated in the LCE conflicts with the fundamental premise of the NSL. According to the NSL, South Korea is the only legal government in the Korean Peninsula, and North Korea is an illegal insurrectionary government within the territory of the South Korea. But the LCE ignores such premise of the NSL and defines South Korea and North Korea as equal entities. This, in effect, puts the NSL at the brink of its own extinction.

Furthermore, according to the LCE, all acts of exchange between South and North Korea are legal as long as they are done with government permission, but since all acts of exchange between South and North Korea violate the NSL, the act of the government permitting such exchange itself is in violation of the NSL. This also opens up the possibility of arbitrary government decisions concerning South-North exchange and contact since the government reserves the right to permit acts of exchange with North Korea. In fact, the government has shown a double standard in the application of law by denying permission for the members of the opposition and anti-government organizations while approving corporate leaders or pro-government journalists.

Inevitably, progress of South-North relations demand a complete turnabout of the past thinking concerning North Korea and the fundamental conception of reunification policy. Nevertheless, out of a desire to have a temporary means of coping with the circumstance, the government maintains the NSL while enacting the LCE. Therefore, the contradiction and conflict between the two laws will become more acute, and will result in a situation where people are confused about which law to obey. This incongruity is nothing short of the destruction of

the principle of constitutional legality that requires equality before the law and legal stability as its essential elements.

(5) North Korean Threat and the NSL

Despite the fact that a facet of the South-North Korea relations has been one of continuous tension, dialogues and exchanges have continued between the two parties. The following two events are especially notable for their place in the progress of South-North relations. First is the simultaneous admission of South and North Korea into the United Nations on September 18, 1991. Second is the signing of the Agreement on Reconciliation, Non-Aggression, Exchange and Cooperation between South and North Korea. This Agreement signifies that the Cold War era is not only over at the UN level but also between the Korean people. Because Article 1 of this Agreement declares, "South and North mutually recognize and respect each other's political system," the NSL which defines North Korea as an anti-state organization lost its standing ground.

Despite this, any time the issue of repealing the NSL comes up, the government opposes it by arguing that North Korea poses a threat. The fact that North Korea still sends spies into South Korea and attempts to gather intelligence cannot be denied.⁶ But the existence of the NSL cannot be legitimized by North Korean threat. Moreover, the spies sent by North Korea and their acts of espionage or destruction can be fully dealt with under other existing laws. Since most of the provisions stipulated in the NSL is repeated by the existing criminal code or special criminal law, real spies or national

⁶ However, the number of spies sent to South Korea has decreased on the whole. The following table shows the number of captured spies up to 1988.

| Year | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | Total |
|------|------|------|------|------|------|------|------|------|------|-------|
| No. | 14 | 13 | 8 | 3 | 8 | 10 | 9 | 0 | 0 | 65 |

security criminals can be adequately disciplined with such laws.⁷

The NSL is either fully repeated in the existing criminal law or is no more than a version of the same law with a heavier punishment. It can be concluded that there will be no instance where a North Korean spy or a terrorist will go free because of the absence of the NSL. Specifically, they are as follows:

- * Acts stipulated by Article 3 of the NSL (Formation of, Participation in, Preparation or Conspiracy to Form or Participate in Anti-State Organization) can be fully prosecuted under Article 87 (Preparation or Conspiracy of Insurrection) and Article 114 (Formation of Criminal Organization, Acts of Violent Crimes) of the Criminal Code and Article 4 (Formation of Criminal Organization) of the Law Concerning Violent Crimes.
- * Article 4 (Performance of Objectives) of the NSL has the same punishment as stipulated in various articles of the Criminal Code. It may have increased the degree of punishment, but the essential make up of the law is completely duplicated in the Criminal Code.
- * Article 5 (Voluntary Support and Receiving Money or Materials) of the NSL can be dealt under Article 4 and thus prosecution is possible under the Criminal Code.
- * Punishable acts corresponding to Article 6 (Escape and Infiltration) of the NSL are punishable under Article 92 (Foreign Exchange Crime) and Article 98 (Preparation or Conspiracy of Espionage) of the Criminal Code. The simple case of visiting relatives

⁷ Sung-Woo Hong, "The Application of National Security Law and Violation of Basic Human Rights", Human Rights and Justice, Korean Association of Lawyers, 1988, p. 28.

merits no value in punishment.

- * Acts stipulated in Article 8 (Meetings, Communications, etc.) and Article 9 (Providing Convenience) of the NSL should be punishable only when there is a clear evidence of complicity in espionage.

As shown above, the repeal of NSL has nothing to do with North Korean invasion or threat. In practice, the main targets of the NSL has not been spies from North Korea, but rather the citizens of South Korea who have no direct association with North Korea whatsoever. Furthermore, as mentioned already, spies affiliated with North Korea have had duplicate application of law since the crime of espionage is covered under the Criminal Code. The following table shows the categories of crime charged against those arrested under the NSL violations from September 1989 to August 1990.

| <i>Crime Category</i> | <i>Number</i> | <i>Percentage(%)</i> |
|---|---------------|----------------------|
| Means of Expression to Benefit the Enemy | 418 | 55.1 |
| Praise, Encouragement, to Support the Enemy | 173 | 22.8 |
| Organization Benefiting the Enemy | 136 | 17.9 |
| Spies | 9 | 1.2 |
| Miscellaneous | 23 | 3.0 |

The above shows that crimes which has no direct relationship with North Korea, such as simple praise, encouragement, siding with, and means of expression benefiting the enemy make up almost 80% of the total NSL violations. This gives an evidence to the fact that the NSL is being used as a weapon in limiting the citizens' freedom of expression.

Therefore the argument that the NSL is needed because of North Korean threat or the special nature of South Korea's security is not convincing.

FOREIGN EXAMPLES AND THE NSL

(1) Law and National Security

Each nation has developed a legal system to protect its national security. The need to stop enemy infiltration and espionage cannot be refuted. Pointing this out, government officials and prosecutors have argued that the NSL exists not only in South Korea, but such law exists universally in democratic nations. They argue that most Western nations such as the United States, Germany, Japan, and France have instituted and maintained a similar legal system.⁸

However, as we will see in detail, the NSL is a special product of South Korea that in many aspects cannot be compared with laws of other nations. Arguing that other nations also have laws similar to the NSL cannot be viewed except as an attempt to cover up the NSL's pernicious and problematic nature. Criminal law scholars and experts in other countries will be dismayed by such comparison of their laws with the NSL. The reasons for such reaction are as follows.

First, the purpose and use of South Korea's NSL is not in protecting national security-related information from an enemy or a foreign country, but in removing or clamping down

⁸ Young-Joo Koh, "In Consideration of the National Security Law Revision Debates", Justice, Vol. 22, Korean Law Institute, Seoul, 1989. The author, a prosecutor, states the following in the above article:

Does such law exist only in our country? That's not the case. Criminal code concerning national security is a legal system that each nation possesses in common as an institutional mechanism to insure a nation's security, albeit there may be small differences due to each nation's different security situation.

domestic opposition forces.

Second, this law places a greater priority on restricting an individual's freedom of speech, especially as it is used in criticizing the government, than on punishing acts of espionage or organized subversion of the government.

Third, because the NSL's various constituent elements and categories of criminal acts are extremely abstract and unclear, it is subject to arbitrary interpretation.

Fourth, punitive sentences under the NSL is extraordinarily heavy and thus the law lacks reasonableness and balance. As we have already seen, the fact that this one law contains tens of articles that have the death penalty as a possible punishment speaks for its brutality.

(2) Security-Related Laws of the United States and the NSL

The South Korean officials and prosecutors cite the Treason Act (Chapter 37, Article 791 or 799), the Sedition, Public Disturbance and Destruction Act (USC Sections 2301 and 2391), the Act of Control of Subversive Activities,⁹ the Communist Control Act¹⁰ as the U.S. security related laws which are similar to the NSL.

However, the U.S. Treason Act is not different at all from the South Korean criminal law concerning treasonous activities. In other words, the U.S. Treason Act corresponds with the South Korean criminal law but not with the NSL. In addition, the U.S. Treason Act strictly restrains its application only to the boundaries of "security information" and "security secret", and it clearly stipulates violation of its regulation in detail.

First of all, the South Korean criminal law concerning treasonous activities is unrestrained in its application, and as

⁹ See USC Title 50, "War and Defense," Chapter 23. This law was called either The Internal Security Act of the 1950's or McCarren Act.

¹⁰ See USC Title 50, "War and Defense," Chapter 23.

such, differs from the U.S. Treason Act.

Second, the U.S. Sedition, Public Disturbance and Destruction Act has the same content as the South Korean criminal law concerning attempt to murder, conspiracy, propaganda and instigation in order to rebel (Article 89, 90), inviting foreign invasion (Article 93), benefiting the enemy, preparing, plotting, propagating, and instigating in order to benefit the enemy (Article 101), forming criminal organization (Article 114), and obstruction of justice (Article 136). Therefore, it is clear that the US security-related laws neither correspond with nor serve as a model for the NSL.

Third, the Act of Control of Subversive Activities forced the communist organizations and their members to register in the Department of Justice, and prohibited them from working in the government and defense industries and disallowed them to use the US passport. But the Act of Control of Subversive Activities was legislated and practiced only during the height of the Cold War era of the 1950's. Since the 1960's, the US courts declared some of its clauses unconstitutional, and restrained from applying it. Now it is a common fact that formation of communist or socialist party and political activities of such parties are allowed in the US.

Fourth, the Communist Control Act made the Communist Party illegal and denied its right as a political party. Its fate had an endless debate even while it was being legislated, and the U.S. judicial branch jealously guarded against its abuse since its enactment.

The aforementioned U.S. security-related laws were introduced in the 1950's during the height of the Cold War era. They were practiced only during this period when the "witch hunt" was being carried out under the hysteria of McCarthyism.¹¹ It is historically fallacious and fictitious to

¹¹ When the United States Congress legislated these two laws, even President Truman described them as similar to the USSR's and reflecting irrational character of the Iron Curtain, and subsequently vetoed them. John Patrick Diggins, *The Proud Decades*, W. W. Norton & Company, New York, 1988, pp. 118.

insist that these laws served as a model for the NSL which have been applied to thousand cases each year, where as the actual applications of these antiquated laws are difficult to be found.

(3) Security-Related Laws of Germany

Past West German laws dealing with national security that have been pointed out as a model for the NSL are from Chapter 3 of West German penal code dealing with acts damaging to the democratic constitutional nation. In Article 84 (continued existence of political party declared unconstitutional), Article 85 (banning of association), Article 86 (proclamation of propaganda method of unconstitutional organization), and the West German law of association. However, these are completely different from the NSL. What are the reason?

First, West German laws focus mainly on restricting the formation of political parties or organizations in an effort to prevent the rise of totalitarianism, regardless of political orientation, be it leftist or rightist. For that reason, West German Penal Code Article 86, Paragraph 3 stipulates that "it does not apply when the propaganda method or propaganda act contributes to public enlightenment, prevention of unconstitutional activities, cultural or academic research, theory, report on current affairs or history and other similar purposes."

Moreover, abolishment of political parties and groups are done through court of law such as the Federal Court according to strict procedures. Since political parties or organizations found unconstitutional are punished only in regard to propaganda method, there cannot be a broad restriction of basic rights as is the case with the NSL.

Second, it is true that in the past this law banned the Socialist Republic Party (SRP) and the Communist Party of Germany (SPD). However, at a later time, an alternative

organization to the Communist Party was formed and became active participating in the elections.

(4) Japan's Terrorist Activity Prevention Law

Japan's Terrorist Activity Prevention Law (TAPL) is also referred to as an example of a law comparable to the NSL. Concerned about the weakening of the police with the end of the U.S. military government, Japan passed this law on July 21, 1952 with the intention to control the terrorist activities of extremist criminal organizations. However, the TAPL differs from the NSL in that it deals with criminal organizations rather than the issue of public's freedom of speech.

As previously mentioned, the NSL is similar to the Public Security Law of the wartime Japan, not the TAPL. Japan abolished the Public Security Law after the war and introduced reforms to democratize the courts and the law. But it is a historical irony that a newer version of the Public Security Law in the form of NSL was established in Korea, a former colony of Japan, and functioned as the hands and feet of dictatorship. Moreover, the Public Security Law, which triggered great opposition by the socialists, was hardly ever activated and thus cannot be seen as a big factor in weakening the human rights situation in Japan.¹²

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND THE NATIONAL SECURITY LAW

(1) South Korean Observance of the ICCPR

¹² Only 8 cases were prosecuted under this law.

For years, South Korea's state of human rights was viewed as being backward by the international community. The South Korean government, after implementing marginal reforms toward democracy at the start of the Sixth Republic (Roh Tae Woo regime) in 1988, joined the International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights that became effective on July 10, 1991.¹³ This led to South Korea's historic participation in the international human rights community.

According to the Constitution of the Republic of Korea (South Korea), "international legal codes hold the same validity as domestic codes ratified and promulgated in the Constitution" (Article 6, Section 1). Through the consent of the South Korean National Assembly, the ICCPR was ratified, promulgated, validated as bearing the same force as domestic laws.¹⁴

In addition, the ICCPR was provided with the authority of self-execution in South Korea. This Constitutional amendment of validating the ICCPR in the same capacity as the domestic laws, in effect, allowed ICCPR's jurisdiction over government agencies, bureaucrats, and common citizens. Therefore, the branches of legal investigation and enforcement were obligated to observe and implement the ICCPR. In all respects, the ICCPR became a source of law for the South Korean court system.

(2) The NSL's Violation of the ICCPR

The South Korean government maintained that there was no fundamental disparity between the Constitution and the International Covenant on Civil and Political Rights (ICCPR)

¹³ It is important to note that, since the sanction of the ICCPR, the right of appeal and retrial (Article 16, Section 5), prohibition of double-penalty (Article 14, Section 7), and freedom to association (Article 22) were restrained.

¹⁴ *The First Report on the Observance of Civil and Political Right in Accordance to the International Law*, Seoul, pp. 6-7.

except those differences arising from customary legal procedures and from the statutory framework and practice designed for policy purposes. Thus, only those differences were withheld from the ratification of the ICCPR.¹⁵ According to this position held by the government, it was implied that, aside from the three articles pertaining to the mentioned differences, the South Korean laws were not in any conflict with the ICCPR and, therefore, it was unnecessary to revise the domestic laws to embody the substance and the spirit of the ICCPR.

However, many experts and NGOs dealing with human rights issues within and without South Korea viewed the government's allegation as being an outright lie. According to them, the following fundamental rights and human rights were repressed under the South Korean the legal system: freedom of ideology and conscience, freedom of expression, freedom of peaceful assembly, right to participate in politics, right to life, prohibition of torture, right to liberty and security of person, humane treatment of inmates, right to labor, right to liberty of movement and residence, right to privacy, freedom of association.¹⁶

While it is difficult to enumerate all the laws which undermined these fundamental rights, the existence of the following laws in South Korea reflect the patent denial of these rights, indicate the NSL as the primary mechanism of repression: Prohibition of Third Party Intervention Laws, Prior Censorship in the Performance Act, Prior Censorship in the Movies Act, Military Secret Protection Law, Criminal Code, Election Laws, Act Concerning Assembly and Demonstration, Code of Criminal Procedure, Penal Administration Act, Labor Disputes Adjustment Act.

The NSL either obstructed or undermined nearly all the fundamental rights guaranteed by the ICCPR. The followings

¹⁵ Ibid.

¹⁶ Human Rights in South Korea: Counter Report to the Human Rights Committee on the Initial Report Submitted by the Republic of Korea Under the International Covenant on Civil and Political Rights, Lawyers for a Democratic Society & National Council of Churches in Korea, May 1992.

are some of the NSL provisions which distinctly contradict with the ICCPR.

First, Article 3 deals with the "formation of and association with an Anti-State Organization." This article specifies the crime of forming or joining an Anti-State Organization. The term of Anti-State Organization means "an association or group, within or outside of the territory of the Republic of Korea, organized for the purpose of assuming a title of the government or to disrupt the State, with a command and control system." Anti-State Organization was originally referred to North Korea.

However, a number of organizations within South Korea and abroad have been judged as Anti-State Organizations. Once an organization or a group is determined to be an Anti-State Organization, not only those who formed or joined it, but also those who made communication or otherwise contacted with it are punishable under this law. This article grossly violates the freedom of assembly delineated in Article 22 of the ICCPR.

Second, Article 4 deals with espionage and related matters. Under the former NSL which applies to actions prior to May 31, 1991, an act of espionage or "detecting, collecting, divulging, transmitting or intermediating the state secrets" shall be punished by execution or life imprisonment. The newly amended NSL differentiates secrets into two categories.

One is "military secret or State secret, which, in order to avoid grave damage to national security, are allowed to be known by only a limited number of people and are concerned with facts, and materials, or knowledge to be kept as secret from an Anti-State Organization." An individual engaged in the described espionage activities is punishable by death or life imprisonment. Similarly, an individual engaged in the espionage of military and State secrets other than those mentioned above is punishable by death, life imprisonment, or, in some cases, imprisonment for a term not less than seven years. The obvious problem that is the definition of "secrets" remain ambiguous and resulted in the persecution of countless citizens through unjust

accusations of espionage.

According to the established ruling of the Korean Supreme Court, which still is effective, State secrets have been defined as "all information and intelligence material that is deemed necessary to keep secret from, or not confirmed to, an anti-State organization for the interest of South Korea. Therefore, it refer to not only state secrets in the strict sense of the term, but also all secret matters in all fields of politics, economy, society, culture, and so forth. Furthermore, even though information is evident and common-sense knowledge within the South Korea, it shall still be regarded as state secret when it might provide benefit to an Anti-State Organization and cause damage to us."¹⁷ Thus, this Article of the NSL and the court's interpretation of the Article clearly violated the freedom of expression and the right to knowledge under Article 19 of the ICCPR.

Third, Article 6 articulates that "anyone infiltrating into the Republic of Korea from an area controlled by an Anti-State Organization, or escaping to such area, with the knowledge that it endangered national security or survival or the basic liberal democratic order" shall be punished with imprisonment for up to ten years. The death penalty may be imposed in cases where the escape or infiltration is deemed to have been committed to receive directives or on the basis of directives from an Anti-State Organization. This Article, which punishes simple movement between South and North Korea under the name of "infiltration and escape," violates Article 12, paragraph 2 of the Covenant, which guarantees the freedom to leave any country including his own, and Article 12, paragraph 4 of the Covenant, which also guarantees the right not be deprived of the right to enter his own country.

Fourth, Article 7, which punishes "praising, encouraging, sympathizing" with an enemy, is the principal provision used to usurp the freedom of expression guaranteed under the Covenant. Article 7, Section 1 of the NSL, stipulates

¹⁷ The Case of Rev. Moon Ik-Whan, Supreme Court decision, 90-Do-646, June 8, 1990.

that persons who have "benefited an Anti-State Organization by way of praising, encouraging, propagating, or siding with the activities of an Anti-State Organization, its members or the persons who have received directives from such organization, or through any other means" or who have "praised, encouraged, propagated or sided with the activities of an anti-state organization, its members or the persons who have propagated or instigated the disruption of the State with the knowledge that it will endanger the national security or survival or the basic liberal democratic order" shall be punished with up to seven years of imprisonment. Under this Article, countless books and works were considered problematic, resulting in the arrest and punishment of writers and artists who produced the work.

(3) U.N. Human Rights Committee's Criticism of the NSL

Scholars and legal experts in South Korea are not alone in criticizing the NSL's violation of the International Covenant on Civil and Political Rights (ICCPR). At the South Korean Human Rights Hearing on February 10, 1991, in Strasbourg, France, the NSL was the central subject of discussion, and it was found to violate many items in the ICCPR. In addition, on July 13 and 14, 1992, at the UN Human Rights Committee Conference in Geneva, an on the Initial Report of the Republic of Korea was made. During this conference many questions and critique were raised regarding the NSL. Following statements are some of the critique made by the UN Human Rights Committee members.

Rosalyn Higgins:

"The South Korean government representative answered that the purpose of the NSL was to prevent establishing an anti-democratic government such as a communist government. However, this goal should be achieved through winning citizen's voluntarily induced support.

Violence should not be tolerated, but it must be handled by a normal legal system."

"It worried me that the NSL may be abused, because the concept of espionage and national secret is too widely interpreted."

"Capital sentence can be eliminated from some types of crime."

"The long term detention and the absence of democratic control measure over the investigating agency are problematic when the NSL case is being proceeded."

Rein A. Myullerson:

"Since a general criminal law can punish a crime menace to national security, a special law is not necessary. However, the NSL has extensively numerous regulations."

"The government representative said that a propaganda which threatens national security is punishable according to the NSL, but it is not clear to decide whether which propaganda is a threat to national security. The NSL must not be used to suppress people who simply have different ideas."

Francisco Jose Aguilar Urbina:

"There are many problems in the NSL. It is not possible to gain citizen's wholehearted consent through such a legal system. It utterly violates human rights."

"It is outrageous for the NSL to be able to render a capital sentence for fifty different

kinds of crime."

In addition to these individual comments made by members of the UN Human Rights Committee, the Committee adopted "Comments of the Human Rights Committee on the Initial Report of the Republic of Korea." The Committee made following proposals and recommendations regarding the NSL.¹⁸

Concerning important issues: The UN Human Rights Committee is concerned about the continuous use of the NSL. The effect of a special situation in the Republic of Korea (division of the Korean peninsula between the capitalist Republic of Korea and the communist Democratic People's Republic of Korea) should not be exaggerated in order to justify the ongoing practice of the NSL. The UN Human Rights Committee believes that a normal legal system (general criminal legal system) is adequate enough to cope with a crime which undermines national security. Moreover, some of the NSL's provisions are ambiguously defined, thus providing a legal basis for wide interpretation of their meaning which may result in punishing an act that did not damage national security.

Proposal and recommendation: The UN Human Rights Committee recommends the Republic of Korea to strengthen its endeavor to comply with the international human rights regulation. The Republic of Korea must make a serious attempt to repeal the NSL, the main obstacle to ensure all the human rights in the international human rights regulations.

The above opinions by the Committee and its members hold additional authority, because the Committee members are internationally well-known specialist in the given field.

¹⁸ U.N. DOC. CCPR/C/79/Add. 6.

Moreover, means to enforce their conclusion may be vague, yet at least in a legal point of view, their conclusions obligate the South Korean government, as a nation that signed the ICCPR Treaty, to comply with the ICCPR, and reflect it in its national law. Hence, the repeal of the NSL becomes the South Korean government's moral and legal obligation to the international community.

(4) South Korea's Public Opinion

Although the controversy surrounding the NSL has been fierce, a survey of the public opinion regarding the NSL has never been satisfactorily conducted. For that reason, there is no precise way to find out how the people think about repealing the NSL. However, the people's view of the NSL is reflected from the results of the indirect surveys such as the following.

First, according to the a survey conducted by the Ministry of Unification in October 1988, 64.4% of Seoul citizens said North Korea should be recognized as a nation before reunification takes place. Moreover, in August 1988, a survey conducted to the working class by the researchers from the Suktap Labor Institute, 70.92% of surveyees agreed to the notion that "mutual recognition of each other's government by South and North Korea is beneficial to the peaceful reunification of Korea." From the perspective of these two surveys, the public opinion for recognizing North Korea as a nation is very high, and the NSL, which is established in the framework of regarding North Korea as a prototypical anti-government organization has very little support.

Second, the survey conducted to the professionals as opposed to the general population demand the NSL's repeal with more certainty. In the survey conducted to the interns of the Judicial Research and Training Institute in August 1988, 65% of the surveyees said they were for the repeal of the NSL, and no one responded that the NSL was without problems. Also,

according to the survey conducted in November 1988, on 448 graduate students at Seoul's 15 universities, 90% of the surveyees responded that the NSL was utilized primarily for the purpose of suppressing anti-government activism. As for the question of amending or repealing the NSL, 53% of the surveyees said the NSL should be amended and 45% of the surveyees said the NSL should be repealed.

Third, on August 1, 1988, the Korean Bar Association's special committee concerning the NSL made a deliberation advocating the repeal of the NSL. In the committee hearing, 15 committee members, with the exception of 1 member, were for the complete repeal of the NSL. The sole dissenting member agreed that the NSL should be repealed, but stated that a law should be legislated to supersede the NSL. The problems of the NSL are well reflected by the professional opinions of the committee, whose members are all lawyers.

The results of the aforementioned public opinion polls show that the need for the NSL's existence, despite the government propaganda, is increasingly being questioned.

CHAPTER 5

NATIONAL SECURITY LAW (NSL) UNDER THE KIM YOUNG SAM REGIME

Vanishing Expectations of the Korean People

The Korean people, ever since the liberation from Japanese colonial rule in 1945, with the exception of the period of 1960, had been deprived of their human rights and freedom by the ensuing military dictatorships. In February 1993, Mr Kim Young Sam was elected as President of south Korea, an event seen by many as the result of long years of struggle by the people against former dictatorial governments. Expectations ran high and many were optimistic about a new future and hoped for a new era of democracy. Hopes ran high for human rights reforms and many expected the abrogation of the National Security Law (NSL), as the new president himself had once been a victim of unfair laws when he was an opposition party leader. They were more than ready to overlook his merger with former president Roh Tae Woo, the last strongman of military dictatorships.

At the beginning of his presidency, President Kim

undertook a reform drive, from cleaning up the corrupted bureaucracy and to the introduction of economic reforms which included the Real-name Financial System. The activities of the Agency for National Security Planning (ANSP) which was notorious for its oppressive and arbitrary activities were reduced whereby political intervention and investigation rights were banned.

As time went by, the expectations of the people for the Kim Young Sam government began to wane. The reforms did not even meet the basic expectations of the people. Today, as President Kim nears his second half of his term, the Korean people believe that there has not been much improvement in human rights conditions in comparison with former military regimes. Reports on human rights from institutions of authority, both in and outside of the country, also support such negative evaluation human rights reforms in Korea

“Human Rights Report” by the Korean Bar Association, in its 1993 and 1994 versions, states there has been no fundamental improvement in human rights under the Kim Young Sam government, compared to former governments. “Human Rights Reports” from the US State Department and Amnesty International also state that there are many remaining problems even though some progress made.

Furthermore, the National Security Law (NSL) is still used as a tool of human rights oppression. Many international human rights organizations have demanded the abrogation of the National Security Law since the emergence of Kim Young Sam government

On February 19, 1993, the “Headquarters for the Abolition of NSL” was established with the participation of almost all

human rights institutions in Korea. Before the establishment, people from religious, legal, academic and political circles undertook the “Declaration of 1000 People” to urge the abolition of NSL. In 1992, the UN Human Rights Committee made recommendations on the revision of NSL. In June 1993, human rights institutions from some 50 countries around the world made a Resolution of Urging the Abolition of NSL at the UN World Human Rights Conference. In February 1994, the US State Department urged the abolition of NSL Conference. as the NSL has been notoriously used to vio late basic human rights including the freedoms of expression and assembly. The Kim Young Sam government, however, has been showing reluctance regarding the abrogation of the NSL. The NSL remains the major obstacle in the realization of fundamental rights laid out in international human rights covenants to which the south Korean government has agreed and ratified. The existence of the NSL shows that no substantial improvement in human rights has been made in Korea. And as long as the NSL exists to abuse and violate the basic rights of the people, full democratization will never be realized in Korea.

Applications of the National Security Law

August 30, 1995, marked the start of the remaining half of the Kim Young Sam presidency. On that day, the number of prisoners of conscience imprisoned under NSL, Law on Assembly and Demonstration, and labor law violations reached 1,262. The number is minimal in comparison with the prisoners of conscience under the Chun Doo Hwan regime (4,700 from 1980 to 1987), and under the Roh Tae Woo regime (6,614 from 1987 1993). The figure of 1,262 prisoners of conscience, however, shows clearly that political arrests

still exceed more than 500 annually. Students, intellectuals and workers are still deprived of their fundamental rights by anti-human rights and anti-democratic legislation.

The figure also clarifies that 600 of those imprisoned were people arrested in violation of the NSL and this amounted to 47.5% of the total prisoners of conscience. NSL applications in political arrests were higher than the application of other laws (refer to Table 1). With the inclusion of nonrestraint cases, the number of NSL applications would be higher (860).

<Table 1. NSL Violations from Jan. 1 1993 to Aug. 30 1995>

| | 1993 | 1994 | '95. 1. 1- '95. 8. 30 | Total |
|--------------|------|------|-----------------------|-------|
| Total | 212 | 466 | 182 | 860 |
| Imprisoned | 112 | 388 | 150 | 600 |
| nonrestraint | 82 | 107 | 25 | 214 |
| Transferred | 18 | 21 | 7 | 46 |

In 1993, there was hope that NSL applications would become relatively fewer as it was the first year of Kim Young Sam government. At the least, people expected that there would be some change from former military dictatorship governments, which had abused the NSL to secure their own power. Kim Young Sam government, however, released only 144 prisoners of conscience out of 675 in the "historic grand amnesty." This was clear indication that there would be no difference in future human rights policies under the new government. In the midst of severe criticism for the continuing NSL applications, over 200 more people were arrested again in the very same year.

In 1994, following the death of the north Korean President Kim Il Sung, the number of people arrested under NSL

violations increased two-fold. It started with a charge by a dean of a university that, "north Korea is backing students here," student activists were all denounced as Kim Il Sung followers (Ju-Sa-Pa), student organizations were labelled as "enemy organizations benefiting the north Korean government," and people were charged with being pro-north Communists when they asked for the despatch of condolence delegations to north Korea at the national level. It was another version of McCarthyism, and NSL violations became worse than ever.

In 1995, the number of those arrested by the NSL dropped a little compared to that of 1994. However, 150 more people were arrested this year, implying that NSL is still abused as a tool of human rights oppression. The "May 1 Federation," was published recently by the prosecution. This case was a dead one as it had already been finalized a few years back. Interrogations and court trials, had been over and the organization dismantled. However, the prosecution managed to charge some people with NSL violations in connection with activities of the defunct group.

The NSL is still used as a tool of political power and human rights oppression under Kim Young Sam government. As of July 5 1995, there are 278 people detained under NSL violations, which makes up 59.8% of the total 465 prisoners of conscience.

Cases of NSL Applications

(1) Freedom of Expression and NSL

The Constitutional Court, on April 2 1990, published its decision on "illegal literature" whereby Article 7 Section 5 of NSL shall be applied only when there is definite danger of

any activity threatening the existence and safety of the nation or if it is harmful to the fundamental democratic order.

Hun-Jae-Gyul, Apr. 2, 1990, 89 Hun-Ga 113. (Cases of Constitutional Court, Volume 2, pp. 49-74)

This decision was a response to criticisms that the NSL prohibited any contacts with literature published by communist countries including north Korea, labelling any such literature as literature benefiting the enemy, even though such literature contained no intention at the overthrow of the democracy or the democratic structure or to enforce communism.

However, government investigative bodies disregard the decision of the Constitutional Court and define any material as enemy benefiting if the material contained anything that was socialist or communist in nature or anything that coincide with north Korean ideology. Arrests of people who publish, distribute or carry such material increased. The charge of "possession of illegal literature" is frequently used by government investigative bodies, when no evidence could be found to incriminate people arrested with charges of "establishing and joining anti-state organizations or enemy-benefiting organizations."

A typical example is the Tae Hoon Roh's case below.

The Korean judicial system does not carry put its full responsibility in the protection of the freedom of expression and allows for the tradition of arbitrary investigation to continue. The following are some examples of such cases:

※ **Case of Tae Hoon Roh , human rights activist**

On August 11 1993, the prosecution charged Mr. Tae Hoon Roh, the coordinator of the Korea NGO Network for the Vienna UN World Human Rights Conference (KONUHC), with NSL violations of possessing enemy-benefiting material. Mr. Roh had previously visited a fund-raising art exhibition for Korean prisoners of conscience in Japan. Mr. Roh was first charged for belonging to an anti-state organization which had connections with the pro-north Korea league in Japan, or Cho-Chong-Ryun. The police, however, failed to find any evidence on that charge, and finally, charged Mr. Roh with the possession of a book titled 'To Recover Lost Lives' and a collection of poems titled 'Sun and Moon in the Prison' written by Do Han Kim , a long-term prisoner, books read and distributed widely in Korea. On Oct. 20 1993, the Seoul Criminal District Court, sentenced Mr. Roh to a one-year sentence with a two-year probation.

※ **The Case of "Bird of Hope"**

The police arrested ten members of the singing troupe "Bird of Hope" from February and March 1994. They were charged with the performing of a musical based on a script which contained pro-north Korean sentiments.. Most received sentences ranging from twelve months to two years on charges that the troupe members "tried to introduce north Korean revolutionary songs during the performances, praising the anti-state organization of north Korea, going beyond just the simple introduction of north Korean songs."

※ **Case of Chang Bok Lee, chairman of the National Alliance of Democracy and Unification of Korea (NADUK)**

On Aug. 9 1994, Mr. Chang Bok Lee was arrested with two other persons and indicted by the Seoul Criminal District

Court. He was then working as a co-chairperson of "South Korean Headquarters for the Pan-National Korean Conference" and was also a chairman of the National Alliance of Democracy and Unification of Korea (NADUK). He was charged with production and distribution of enemy-benefiting material in connection with Pan-National Korean Conference held in August 1994.

Decision of Seoul Criminal District Court, Decision of December 9, 1994, 94 Ko-Dan 6459

However, in the Appellate Court, Appeal Section 1 under Criminal Division of Seoul District Court (Chief Judge, Shin Sup Lee) unexpectedly acquitted Mr. Lee on April 6, 1995. The Court stated the reason of the decision as, "To secure the fundamental order of democracy which the NSL seeks to secure, there should be tolerance even to such expressions which should embarrass us. Such tolerance is the price we should pay for enjoying the democratic fundamental order. The development of a healthy society can be established by securing freedom of expression and thought, and by allowing free competition of thought...." (Seoul District Court, Criminal Division 1, April 6, 1995, Decision 95-No-8)

The material accused the Korean government of being anti-democratic, anti-national, and pro-American. It also demanded the realization of the Confederation model of reunification, the abolition of the NSL, the dissolution conglomerates, and the withdrawal of US forces.

※ **Case of "Understanding Korean Society"**

On Aug. 2 1994, the prosecution announced that it was taking legal action against some professors of Kyung Sang University, including professor Sang Hwan Chang and Jin Sang Chung for co-writing a textbook, titled "Understanding Korean Society." Nine people including prof. Chang and

Chung were involved in publishing the textbook, which had been selected and used as a regular textbook for college elective courses for four years. The prosecution charged that the textbook was not based upon objective analysis and that it emphasized confrontation among classes and propagated class and violent revolution and as such, fell under the category of enemy-benefiting material defined under Article 7 Section 5 of the NSL.

On the 31st of the same month, Jinju branch of Changwon District Court (judge In Suk Choi), rejected the prosecution's request for an arrest warrant against the two professors. On Nov. 30, the prosecution charged professors Chang and Chung for producing and distributing enemy-benefiting material. Others were released on probation or with the charges suspended.

※ **Case of Mu Yong Kim, an author of "History of Partisan".**

On Mar. 23 1995, the police arrested Kim Mu Yong, an instructor in the department of history at Korea Air and Communication College, with the charges of producing and distributing material on the partisan movement. Mr. Kim used to be a researcher at the Research Institute of History and published a research paper on partisan activities as part of a series on the partisan movement. The police charged that the paper praised and sided with anti-state organizations.

※ **Case of Publishers**

Three publishers were arrested under NSL violations in 1991 and one publisher in 1992 before the advent of the Kim Young Sam government. By 1994, 11 publishers had been arrested (3 in 1993 and 8 in 1994). The publishers were charged with the publication of books which in fact had been

published several years prior to the arrests. This is a further indication of violations of the freedom of publication under the present government.

| Company name | Publisher | Date arrested | Name of books |
|-----------------------|------------------------|---------------|---|
| Il-bit Publishing Co | Sung Woo Lee | Mar. 19, 1994 | "Lecture on Workers' Economy" (May, '90), "Lecture on Workers' Philosophy" (Aug. '90) and 3 others |
| Him Publishing Co. | Yun In Kim | Mar. 23, 1994 | "Practical Philosophy on Love and Unification" (Oct. '90), "Youth and Student Movement" (Mar. '90) and 5 others |
| Il-tur Publishing. | Chi Kwan Park (Editor) | Apr. 20, 1994 | "Melting Workers" (North Korean novel) |
| Paik San Suh Dang. | Chul Mi Kim | Jun. 10, 1994 | Lenin's "Imperialism" (Dec. '87) and 3 others |
| Ga Suh Won Publishing | Hee Kun Lee | Aug. 20, 1994 | "With the Century" (memories of Kim Il-Sung) |
| Salim-tur Publishing | Yun Hyun Song | Aug. 30, 1994 | "Friends" (North Korean novel) |

※ Case of oppressing computer networks

As computer communications are getting more popular, discussions and communications through computer lines are also increasing. Opinions on socialism or the introduction of materials on socialism through computer networks are frequent. These have also become sources of governmental oppression.

On Dec. 7 1993, Mr. Hyung Ryul Kim, chairman of

"Society of Modern Philosophy" was arrested by the police after paging up an article supporting Socialist Workers' Federation (or Sa-no-maeng) onto a local computer network. The article was published by a magazine called 'Our Thought'. Mr. Kim was sentenced, later on May 10 1994, to 1-year prison sentence with 2-year probation. The court recognized Mr Kim's activity as a violation of NSL on distributing enemy-benefiting material, and stated that "even though the article of Sa-no-maeng that the defendant paged up to the computer network did not have any intention to oppose fundamental democratic order or support enemy-benefiting organizations, it is accepted as NSL violation as the defendant was aware beforehand that such an act would be in violation of the NSL."

On Mar. 9 1994, Mr. Young Sun Kim, the acting chairman of "Society of Modern Philosophy" was arrested since he paged up an article called 'The Phase of the Society of Modern Philosophy' to a computer network. Furthermore, on Sep. 30 1995, Mr. Tae Sung Kim was arrested as he paged up a letter to express his condolences on the death of north Korean president Il Sung Kim.

(2) Freedom of Association and the National Security Law

There persists a trend of suppression under the current government against anti-governmental organizations, labor organizations, student movement organizations, and other research organizations through the use of the rules regarding anti-state organizations and enemy-benefiting organizations under the National Security Law. There has been recent increases in the revival of old cases which had been already

concluded number of years ago. This may be attributed to the intention of maintaining a security-sensitive government.

※ **'South Korean Socialist Science Institute' Case**

The Agency for National Security Planning (ANSP) on 23 June 1993 arrested former Ulsan University professor, Kuk Cho, and 6 others, for the formation and participation in an anti-state organization named the South Korean Socialist Science Institute. The Seoul Criminal District Court ruled that "the South Korean Socialist Science Institute is a research institute formed by a few scholars for the purpose of conducting research on socialist theory and of propagating its ideology. Its activities did not entail any direct, specific action to overthrow the state, and thus it is not an anti-state organization." However, the court stated that the organization was within the boundary of enemy-benefiting organizations.

※ **Revolutionary Socialist Labor League Case**

In mid-November 1993, the police arrested Un Chang and 6 others for organizing the Revolutionary Socialist Labor League which was accused of being an enemy-benefiting organization. The police did not disclose the whereabouts of those arrested and charges until the detainees were transferred to the prosecutor's office on 7 December. Later, on 27 March 1994, the police further arrested 4 laborers including Pyung Kee Ham.

※ **Advanced Guard for Saving the Nation (Gu-guk-geon-oui) Case**

The ANSP on 14 June 1994 arrested Jae Gu Ahn and 4 others, and two days later, 5 others and accused them for forming the Advanced Guard for Saving the Nation, allegedly

an underground South Korean branch of the Chosun Labor Party under the directions of North Korea. They were charged with the creation of an anti-state organization, violating of the National Security Law. In the same period, the police arrested Young Kee Lee and 2 others, while the Military Intelligence Agency (Gimusa) arrested Dong In Kang and 1 other person on the same charges. Ahn, during the trial claimed that he had not formed an anti-state organization, but the Seoul Criminal District Court on 30 November 1994 found him guilty and sentenced him to life imprisonment. Accordingly the court levied heavy punishment for the other people. All denied knowledge and participation in any such organization.

※ **Il Sung Kim Ideology Youth League Case**

10 Korea University Alumni members and undergraduates were arrested on 4 August 1994, charged with the formation of an anti-state organization, the Il Sung Kim Ideology Youth League, and for controlling the All Korean Students Association behind the scenes.

※ **Socialist Democratic Youth League Case**

The ANSP put Oh Chang Kwon and 8 members of the 'Socialist Democratic Youth League' (Chairperson Seung Moon Hong ; abbreviated Sa-Min-Chung) into custody after the searching the office of the league. Those arrested were charged with "creating a political institution and studying socialist ideology, and transmitting socialist ideology through publications" violating a clause on the prohibition of forming enemy-benefiting organizations under the National Security Law. The ANSP put Chungbuk University Professor, Cho Ha Yu and others on the "wanted" list.

※ **'Sam' Case**

The National Security Law was extended to high school students and on 2 September 1994, Young Kuk Go, Yong Woo Kim, and Young Kee Moon were arrested on the charges of organizing an enemy-benefiting organization called Sam, for the purpose of educating and mobilizing high school students through the Juche ideology. Most of the detainees were deprived of sleep in the course of investigation.

※ **Laborers' National Culture Movement Association Case**

The police arrested 8 members of the Laborers' National Culture Movement Association accusing them of spreading the literature/art theory based on Juche ideology among laborers and that they had advocated laborer participation of illegal assemblies. But the mentioned organization was merely a public cultural organization that had been formed in August 1990 and operated in Guro and Jungbu areas. Its activities entailed running a culture school, folk music studio, and singing studio. It is noteworthy that among the arrested, Chul Woo Lee had already left the group 2 years ago.

※ **'Independence Formation' Case**

In 1995, the police arrested a large number of college students from Pusan, Kyunggi, Wongyang, and Chungnam Universities claiming the discovery of an 'independence'

organizations in these schools. According to the police, these students created an organization called the Independence Formation and distributed illegal printed materials and led illegal demonstrations. But the students contended that there existed no such organization and it was a false accusation against student body groups and former and current student activists.

| School | Time Arrested | Number Arrested |
|---------------------|---------------|-----------------|
| Pusan University | 1995. 2 | 15 |
| Kyunggi University | 1995. 3 | 13 |
| WonKwang University | 1995. 5 | 9 |
| Chungnam University | 1995. 10 | 12 |

※ **'Student Socialist Formation' Case**

The police arrested, on 26 August, 1995, 13 members of the Seoul National, Korea, and Ewha University alumni and students under the charge of creating an enemy-benefiting organization known as the 'Student Socialist Formation.'

(3) National Secrets and the National Security Law

Based on its own interpretation on the provision of national secrets under the NSL, investigating agencies are continuing to arrest and indict people for the matters already published in newspapers or magazines. The court, defining the term national secrets in a broad manner, is supportive of such arbitrary practices by the agencies. Court interpretation on the provision of national secrets is as follows: 'The national secrets stated in Article 4(1), 2(Na) of the NSL include all intelligence which are secret or not confirmed to anti-state organizations; and which are beneficial for the Republic of Korea. Thus, national secrets are not limited to the strictest

meaning of the word but include all political, economic, social, cultural and other aspects of secrets of a state, and although information disseminated legally and widely, it would still be considered a national secret if it benefits North Korea, an anti-state organization, and if it is injurious to the Republic of Korea.'

The Supreme Court 8 June 1990 Decision Form 90 646 Ruling, 27 October 1992, Form 92 2068 Ruling, 8 October 1993, Form 93 1951 Ruling, and many others.

※ Case of Writer Suk Young Hwang

The ANSP on 27 April, 1993, arrested writer Suk Young Hwang . He was charged with disclosing national secrets during his visit to North Korea in 1989.

Concerning Suk Young Hwang's detention, the Working Group on Arbitrary Detention under the UN Human Rights Committee in September 1994 ruled that this had been an arbitrary detention and was a violation of Article 19 of the International Covenant on Civil and Political Rights (Suk Young Hwang-30/1994 Republic of Korea).

Hwang was also charged with disclosing the names of people working in domestic dissident movements and general situation of the movements. He was also accused of disclosing information on the existence of a thousand nuclear warheads in south Korea.

The Seoul Criminal District Court acquitted the defendant for the former charge and convicted him for the latter. The Seoul High Court on 21 February 1994 the decision for the latter stating as the revealed information could not be considered a national secret because it had been acquired by the defendant through the media that it also reflected personal

opinion rather than the opinion of any nuclear expert. (Seoul High Court 21 February 1994 Ruling 93No 3764).

However, the High Court ruling was overturned at the Supreme Court and it was declared that public knowledge even if legally disseminated through newspapers or other publications would still be considered a national secret if it might be of useful information for North Korea, an anti-state organization, and injurious to the Republic of Korea (Supreme Court Criminal Division 2, Presiding Justice, Woo Man Ahn, Kyung Song Chun , 24 May 1994 Ruling). During the appeal, the Seoul High Court Criminal 5 Division convicted Hwang on both charges.

※ Sam Suk Kim, , Eun Ju Kim Case

On 13 September 1993, the ANSP arrested the former planning council member of the Korean Alliance for Anti-nuclear Peace Movements (KAANP), Sam Suk Kim, and his sister, Eun ju Kim, charging them of engaging in espionage activities after meeting a North Korean spy in Japan.

Regarding this case, In Oh Bae(autonym Hong Yong Baek) on 29 October 1994 (after the Supreme Court decision) made a declaration of conscience stating that this case had been a fabricated espionage case made up when he was working as an ANSP informer.

The Kim siblings have been tortured in the course of investigation by the ANSP which included sexual torture.

Their charges include disclosing information on "military and nuclear intelligence", giving information on 'the Policy Information Booklet published by the Democratic Liberal Party, Hangyerae Newspaper, Mal Magazine, and the Public

Hearing Information Booklet on the Repeal of the NSL which are materials easily accessible. A heated debate between the council and the prosecution arose on the meaning of "national secret" The prosecution later acknowledged that the Policy Information Booklet published by the Democratic Liberal Party and the Public Hearing Information Booklet on the Repeal of the NSL were not national secrets and dismissed the charges.

On 25 October 1994, the Supreme Court convicted Sam Suk Kim for collecting and disclosing military and nuclear information. Eun Ju Kim was acquitted.

APPENDIX 1

NATIONAL SECURITY LAW

May 31, 1991

| | |
|--|-------------------------|
| Chapter 1: General Provisions..... | Article 1 - Article 2 |
| Chapter 2: Crime and Punishment..... | Article 3 - Article 17 |
| Chapter 3: Special Criminal Procedure... | Article 18 - Article 20 |
| Chapter 4: Reward and Relief..... | Article 21 - Article 25 |

Chapter 1: GENERAL PROVISIONS

Article 1: Purpose

- (1) The purpose of this Act is to restrict anti-state activities which endanger the national security, so that the nation's security and the life and liberty of the citizens can be secured.

- (2) Interpretation and application of the provisions of this Act shall be restrictive only to achieve the purposes stated in Section (1), and shall not be liberally construed or applied in a manner which unjustifiably impinge upon the fundamental civil rights of the citizenry protected under the Constitution.

Article 2: Definition

- (1) Under this Act, the term "Anti-State Organization" shall mean an association or a group having a command structure with the purpose of claiming the title of the Government or overthrow the State.

Chapter 2: CRIME AND PUNISHMENT

Article 3: Formation of Anti-State Organization

- (1) Any person who organizes or joins an Anti-State Organization shall be punished in accordance with the following classification:
 - (a) any person acting as the ring leader shall be punishable by death or life imprisonment;
 - (b) any person engaged in the duties of leadership or officers shall be punishable by death, life imprisonment or imprisonment for a term of not less than 5 years; and
 - (c) any person other than those mentioned above shall be punishable by imprisonment for a term of not less than 2 years.
- (2) Any person who recommends membership in an Anti-State Organization to a third party shall be punishable by imprisonment for a term of not less than 2 years.

- (3) Any person found to have attempted the acts in Sections (1) and (2) shall be punished.
- (4) Any person conspiring or preparing to commit the crimes under Sections (1)(a) and (1)(b) shall be punishable by imprisonment for a term of not less than 2 years.
- (5) Any one conspiring or preparing to commit the crime under Section (1)(c) shall be punishable by imprisonment for a term of not exceeding 10 years.

Article 4: Performance of Objectives

- (1) If a member of an Anti-State Organization or a person receiving orders from such organization engages in actions in furtherance of said organization's objectives, said member or person shall be punished in accordance with the following classifications:
 - (a) any person who has committed the acts defined under Articles 92 through 97, Article 99, Section (2) of Article 250, Article 338, or Section (3) of Article 340 of the Criminal Code shall be subject to the punishment prescribed under the applicable Articles.
 - (b) any person who has committed the acts defined under Article 98 of the Criminal Code or has detected, collected, divulged, transmitted or intermediated the State's secrets shall be punishable in accordance with the following classifications:
 - (i) if the subject military secret or the State's secret is of the kind which must be restricted to select persons in order to avoid material detriment to the national security, or fact, material or knowledge which must be guarded

- against the enemy states and Anti-State Organizations, then the person shall be punishable by death or life imprisonment.
- (ii) in cases involving military secret or the State's secret other those described under sub-section (i), a person in violation shall be punishable by death, life imprisonment or imprisonment for a term of not less than 7 years.
- (c) any person who has committed any one of the acts defined under Article 115, Section (1) of Article 119, Articles 147, 148, 164 through 169, 177 through 180, 192 through 195, 207, 208, 210, Section (1) of Article 250, Articles 252, 253, 333 through 337, 339, Sections (1) and (2) of Article 340 of the Criminal Code shall be punishable by death, life imprisonment or imprisonment for a term of not less than 10 years.
- (d) any person who has destroyed the transportation or communication facilities or buildings or any other key facilities used by the State or public organization, or kidnapped or inveigled other person, or moved or taken away vessels, airplanes, automobiles, weapons and any other goods, shall be punishable by death, life imprisonment or imprisonment for a term of not less than 5 years;
- (e) any person who has committed any one of the acts defined under Articles 214 through 217, 257 through 259, and 262 of the Criminal Code, or destroyed, concealed, forged, or transferred the documents or goods

- considered the State's secret shall be punishable by imprisonment for a term of not less than 3 years; and
- (f) any person who has instigated or propagandized any one of the acts defined in sub-sections (a) through (e), or fabricated or disseminated false facts or transmitted fabricated facts concerning such matters that might cause social disorder, shall be punishable by imprisonment for a term of not less than 2 years.
- (2) Any person who attempts to commit the acts defined under Section (1) shall be punished.
- (3) Any person who prepares or conspires to commit the crimes as set forth in sub-sections (a) through (d) of Section (1) shall be punishable by imprisonment for a term of not less than 2 years.
- (4) Any person who prepares or conspires to commit the crimes as set forth in sub-sections (e) and (f) of Section (1) shall be punishable by imprisonment for a term not exceeding 10 years.

Article 5: Voluntary Support and Receiving Money or Materials

- (1) Any person who has voluntarily committed any one of the acts as stipulated in Section (1) of Article 4 for the purpose of aiding an Anti-State Organization or its members or those who had been under instruction from such organization shall be punished as prescribed in Section (1) of Article 4.
- (2) Any person who has received money or materials from member of an Anti-State Organization or a person who had been under instruction from such organization, with the knowledge that such action threatens the nation's existence and security and the

order of liberal democracy, shall be punishable by imprisonment for a term of not exceeding 7 years.

- (3) Any person who attempts to commit the crimes as stipulated in Sections (1) and (2) shall be punished.
- (4) Any person who prepares or conspires to commit the crimes as stipulated in Section (1) shall be punishable by imprisonment for a term of not exceeding 10 years.
- (5) Deleted.

Article 6: Escape and Infiltration

- (1) Any person who has infiltrated into this country from an area which is controlled by an Anti-State Organization, or illegally escaped to such area, with the knowledge that such action threatens the nation's existence and security and the order of liberal democracy, shall be punishable by imprisonment for a term of not exceeding 10 years.
- (2) Any person who has escaped or infiltrated after receiving or in order to receive a directive from an Anti-State Organization or its member, or after discussing or in order to discuss the execution of its objectives, shall be punishable by death, life imprisonment or imprisonment for a term of not less than 5 years.
- (3) Deleted.
- (4) Any person who attempts to commit the crimes stipulated in Sections (1) and (2) shall be punished.
- (5) Any person who prepares or conspires to commit the crimes as stipulated in Section (1) shall be punishable by imprisonment for a term of not exceeding 7 years.
- (6) Any person who prepares or conspires to commit the crimes a stipulated in Section (2) shall be punishable by imprisonment for a term of not less

than 2 years.

Article 7: Praise, Encouragement, Etc.

- (1) Any person who, with the knowledge that such action threatens the nation's existence and security and the order of liberal democracy, praises, encourages, advertises or supports the activities of an Anti-State Organization or its members, or advertises or advocates a rebellion against the State shall be punishable by imprisonment for term of not exceeding 7 years.
- (2) Deleted.
- (3) Any person who organizes an association which purports to commit the acts as stipulated in Section (1) or participates in such association, shall be punishable by imprisonment for a term not less than 1 year.
- (4) Any person who, as a member of the association as mentioned in Section (3), has fabricated or disseminated false facts or transmitted fabricated facts concerning such matters which will likely cause social disorder shall be punishable by imprisonment for a term of not less than 2 years.
- (5) Any person who, for the purpose of committing the acts as stipulated in Sections (1), (3) and (4), has produced, imported, duplicated, kept in custody, transported, disseminated, sold or acquired documents, drawings and any other similar means of expression shall be punished as prescribed in each applicable Section.
- (6) Any person who attempts to commit the crimes as stipulated in Section (1) and Sections (3) through (5) shall be punished.
- (7) Any person who prepares or conspires to commit the crimes as stipulated in Section (3) shall be

punishable by imprisonment for a term of not exceeding 5 years.

Article 8: Meetings, Communication, Etc.

- (1) Any person who, with the knowledge that such action threatens the nation's existence and security and the order of liberal democracy, has met with or has established liaison with, by communication or any other means, a member of an Anti-State Organization or a person who had been under instruction from such organization, shall be punishable by imprisonment for a term of not exceeding 10 years.
- (2) Deleted.
- (3) Any person who attempts to commit the crimes defined in Section (1) shall be punished.
- (4) Deleted.

Article 9: Providing Convenience

- (1) Any person who has provided firearms, ammunition, gunpowder, or any weapon, with the knowledge that the person to whom such weapon is provided has committed or intends to commit the crimes stipulated in Articles 3 through 8 of this Act shall be punishable by imprisonment for a term of not less than 5 years.
- (2) Any person who has provided money, materials or any other benefits in terms of property, or has furnished a place of hiding, meeting, communication, or liaison or has provided convenience by any other means, with the knowledge that the person to whom such convenience is offered has committed or intends to commit the crimes stipulated in Articles 3 through 8 of this Act, shall be punishable by imprisonment for

a term of not exceeding 10 years. Provided, however, that if the above-mentioned person has a family relationship with the offender of the stipulated crime, the punishment hereunder may be either mitigated or remitted.

- (3) Any person who attempts to commit the crimes stipulated in Sections (1) and (2) shall be punished.
- (4) Any person who prepares or conspires to commit the crimes stipulated in Section (1) shall be punishable by imprisonment for a term of not less than 1 year.
- (5) Deleted.

Article 10: Failure to Report

Any person who, possessing knowledge of a person who has committed one of the crimes as set forth in Articles 3 and 4, and Sections (1) and (3) of Article 5, has failed to report the matter to an investigation or intelligence authority, shall be punishable by imprisonment for a term of not exceeding 5 years or a fine not exceeding two million Won. Provided, however, that if the above-mentioned person has a family relationship with the offender of the stipulated crime, the punishment hereunder may be either mitigated or remitted.

Article 11: Desertion of Special Duties

Any public official, charged with a duty to investigate crimes or gather intelligence, who has deserted his duty with the knowledge that a person under investigation has committed the crime prescribed in this Act, shall be punishable by imprisonment for a term of not exceeding 10 years. Provided, however, that if the aforesaid person has a family relationship with the offender of the

stipulated crime, the punishment may be either mitigated or remitted.

Article 12: False Accusation and Fabrication

- (1) Any person who has made false accusations or committed perjury or fabricated evidence of guilt or destroyed or concealed evidence of innocence with respect to the crimes as set forth in this Act for the purpose of producing criminal charges against another person, shall be punished by the same penalty as stipulated in the corresponding Article.
- (2) In case a public official who takes in charge of criminal investigation or intelligence or any other person who assists or direct such work, has committed such acts as stipulated in Section (1) by abusing his official power, he shall be punished by the same penalty as set forth in Section (1).
Provided, however, that the minimum penalty shall be imprisonment for a term of 2 years, if the minimum penalty thereunder is imprisonment for a term of 2 years.

Article 13: Special Aggravated Penalty

If a person having committed and been convicted of the crime stipulated in this Act, Article 13 or 15 of the Military Penal Act, "Rebellion" Chapter I or "Foreign Aggression" Chapter II of Part 2 of the Criminal Code, commits again the crime stipulated in Article 3, Paragraph 1, Item 3, Paragraphs 2 through 5, Article 4, Paragraph 1, Item 1 (however, only limited to the crime stipulated in Article 94, Paragraph 2, Articles 97 through 99), Article 4, Paragraph 1, Items 5 and 6, Article 4, Paragraphs 2 through 4, Article 5, Article 6, Paragraphs 1, 4 through 6, or Articles 7 through 9 in the course of

execution of punishment or within five years after the termination of the execution of punishment or after the final decision not to be executed the punishment, the maximum penalty applicable to such crime shall be the capital punishment.

Article 14: Suspension of Qualification

In cases where the sentence to be imposed is imprisonment with respect to the crimes as set forth in this Act, suspension of qualification for a term not exceeding the maximum term of the imprisonment may be imposed concurrently.

Article 15: Confiscation and Forfeiture

- (1) If a person, having committed one of the crime as set forth in this Act, has received any benefit, such benefit shall be confiscated. However, if it is impossible to confiscate such benefit, a sum equivalent thereto shall be forfeited.
- (2) In cases where no indictment has been made against the offender of the crime stipulated in the Act, the public persecutor may order the seized property either to be destroyed or be reverted to the National Treasury.

Article 16: Mitigation of Penalty

For any person coming under one of the following Sections, the prescribed punishment shall be either mitigated or remitted:

- (1) Any person who surrenders oneself after having committed the crime stipulated in the present Act;
- (2) Any person who informs the authorities on another person who has committed a crime stipulated in the Act or interferes with commitment of the crimes under this Act after having himself committed the

- crime stipulated in the present Act.
- (3) Deleted.

Article 17: Exclusion of Application of Another Act

The provision of Article 9 of the Labor Dispute Adjustment Act shall not apply to the person who has committed the crimes as set forth in this Act.

Chapter 3: SPECIAL PROVISIONS GOVERNING CRIMINAL PROCEDURE

Article 18: Production and Detention of Witness

- (1) Any person who, without justification, fails to appear as a witness to a crime as stipulated in this Act twice or more times after having been served with summons from a public prosecutor or a judicial police official, may be produced after securing a warrant of detention from a judge of the court having jurisdiction.
- (2) In the event a warrant of detention is issued to produce a witness, such witness may be temporarily detained in a nearby police station or another proper place, if necessary.

Article 19: Extension of the Detention Period

- (1) If a judge of a district court recognized that there is a valid reason to continue investigation of the crimes which fall under Articles 3 through 10, he may, upon an application by a public prosecutor who received a request for an extension by a judicial police officer, authorize a single extension of the period of detention as stipulated in Article

- 202 of the Code of Criminal Procedure.
- (2) A judge of a district court, upon determining that there is a valid reason to continue the investigation of the crimes as set forth in Section (1), may, upon an application by a public prosecutor, authorize extension of the detention period as stipulated in Article 203 of the Code of Criminal Procedure. Such extension, however, shall be limited to only two times.
- (3) The extension of the period stipulated in Sections (1) and (2) shall not exceed 10 days.

Article 20: Deferment of Public Prosecution

- (1) A public prosecutor may defer public prosecution against a person who has committed a crime stipulated in this Act upon consideration of the circumstances stipulated in Article 51 of the Criminal Code.
- (2) A person against whom public prosecution has been deferred in accordance with the provision of Section (1) may not be indicted if 2 years has elapsed without institution of any public prosecution against him.
- (3) If a person against whom public prosecution has been deferred violates regulations governing surveillance or guidance as stipulated by the Minister of Justice, deferment of public prosecution against him may be canceled.
- (4) In cases where the deferment of public prosecution has been canceled according to the provision of Section (3), the person concerned may be detained for the identical crime, regardless the provision of Article 208 of the Code of Criminal Procedure.

Chapter 4: REWARD AND RELIEF

Article 21: Monetary Award

- (1) Any person who has informed an investigation or intelligence agency of a person who has committed any crime stipulated in this Act or has arrested such person shall be given monetary award as stipulated by a Presidential Decree.
- (2) Monetary award under Section (1) shall apply to those personnel working for an investigation or intelligence agency who has recognized and arrested a person who has committed any crime stipulated in this Act.
- (3) A monetary award may be given in accordance with the provision of Section (1) to a person who has inevitably killed the offender or has forced the offender to commit suicide because of the offender's resistance or fighting against him when he was trying to arrest the offender.

Article 22: Reward for Service

- (1) If the property is seized under the foregoing Article, a reward for services, valued at one-half of the value of the seized property, may be awarded in those cases where monetary reward is given.
- (2) A reward for services corresponding to one half of the value of the money or goods may be awarded to any person who turns over to the investigative or intelligence authorities the money or materials received from an Anti-State Organization or its member. The same shall apply in cases where a member of an Anti-State Organization turned over the aforesaid money or goods.
- (3) The necessary matters concerning the request for

and payment of the reward for services hereunder shall be provided for by Presidential Decree.

Article 23: Relief

Bereaved family of the person injured or killed in the course of informing an investigation or intelligence agency or arresting the offender who has committed any crime stipulated in this Act may be put in the list of the people subject to relief under the Military Relief and Compensation Act.

Article 24: Committee to Screen Persons of Meritorious Service for National Security

- (1) In order to examine and decide payment of the prize and reward for services stipulated in this Act and the persons subject to relief mentioned in Article 23, a Committee to Screen Persons of Meritorious Service for National Security activities (hereinafter referred to as "the Committee") shall be established.
- (2) The Committee may, if necessary for its deliberation, summon or investigate the person concerned, and demand the government agency and other public and private organizations for its report on the necessary matters concerned.
- (3) Necessary matters concerning organization and operation of the Committee shall be determined by a Presidential Decree.

Article 25: *Mutatis Mutandis* - Application to Persons Who are Subject to the Military Law

In cases where a person who has committed a crime provided for in this Act is also charged under one of the sub-sections of Section (1) of Article 2 of Military Court Act, the judge, the public prosecutor, and the judicial police officer in

proceedings under this Act shall be construed as corresponding personnel in the Military Court and shall be construed to mean the military judicial police officer.

ADDENDUM

Article 1:

This Act shall go into force on the date of its promulgation.

Article 2:

The Anti-Communist Law shall hereby be repealed. However, the punishment for the crime which had been committed prior to the abrogation of the same Act shall be determined by the provisions specified by the same.

Article 3: Amendment to other Act and Relationship with other Act

- (1) Deleted.
- (2) Deleted.
- (3) Deleted.
- (4) In cases where references have been made in other laws of the provisions of previous National Security Law or Anti-Communist Law, in so far as the referenced provisions remain the same, the references shall be deemed to have been made to the provisions of this Act.

Article 4: Interim Measures

- (1) Persons having committed and been convicted of the crimes under Chapter II, "Rebellion"; and

Chapter III, "Foreign Aggression" of volume II of the old Criminal Code, Article 32 or 33 of the old National Constabulary Act, Section (2) of Article 8, or Article 9 of the old Coast Guard Act, the old Decree on Special Measure of the Punishment of Crimes under Emergency, or old National Security Law or Anti-Communist Law, shall be regarded to have been convicted in accordance with the provisions of Chapter 1, Rebellion and Chapter II, Foreign aggression, Volume II of the Criminal Code, or Military Penal Act 13 or 15 or this Act. Persons having committed and been convicted of the crimes specified in the old National Security Law and Anti-Communist Law after the promulgation of this Act shall be treated to be the same way as mentioned hereunder.

- (2) Persons having committed and been convicted of crime stipulated in Article 6 of the Special Act or punishment of offenders of the specified crimes prior to the promulgation of this Act shall be deemed to have been convicted in accordance with the provisions of this Act.
- (3) Measures, taken prior to the promulgation of this Act in accordance with the provisions of the old National Security Law and Anti-Communist Law shall be deemed to have been taken in accordance with the provisions of this Act.
- (4) The request for prize or reward for service made in accordance with the Anti-Communist Act prior to the implementation of this Act should be deemed to have been made in accordance with the provisions of this Act.

**ADDENDUM (December 4, 1987);
MILITARY COURT ACT**

Article 1: This Act shall go into force on February 25,
1988.

Articles 2 through 4: Deleted.

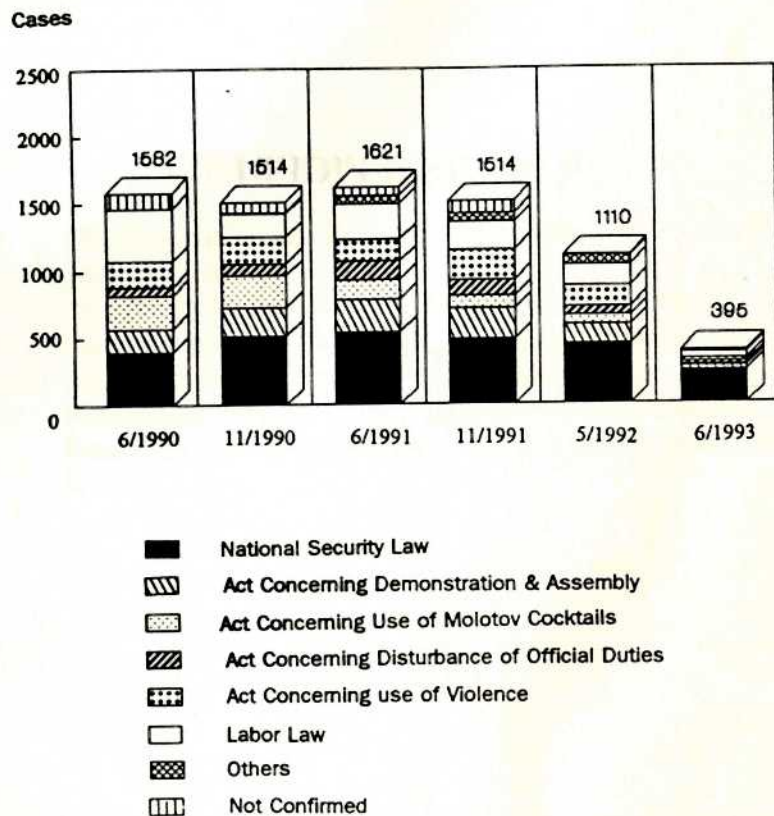
ADDENDUM (May 31, 1991)

1. This Act shall go into force on the day of its promulgation.
2. Punishment for the crimes committed prior to this Act went into force shall be governed by previous provisions.
3. Any person who has received a guilty verdict under the National Security Law in effect prior to this Act went into force shall be construed to have received the guilty verdict under this Act.

APPENDIX 2

FACTS & FIGURES

**POLITICAL PRISONERS
IN SOUTH KOREA:
Cases of Incarceration**



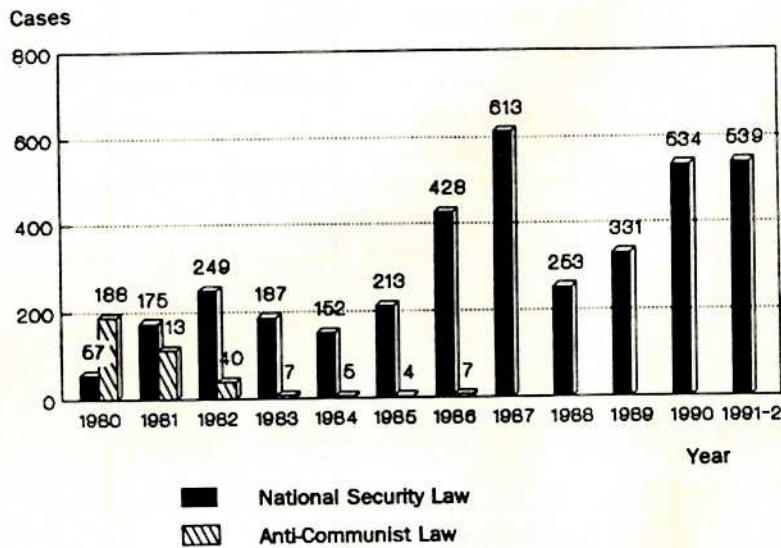
Source: Court Administration Office (Seoul, Korea)

**Total Charges Applied to Political Prisoners
according to Laws
(as of June 1, 1993)**

| | |
|---|------------|
| National Security Law | 243 |
| Act Concerning Demonstration & Assembly | 35 |
| Act Concerning Use of Firebombs | 7 |
| Act Concerning Disturbance of Official Duties | 19 |
| Act Concerning Use of Violence | 26 |
| Labor Law | 47 |
| Others | 15 |
| Not Confirmed | 3 |
| TOTAL | 395 |

* Please note that the total number of cases exceed the total number of political prisoners, since several laws concurrently charged to certain individuals. The total number of political prisoners as of June 1, 1993 stands at 319 (78 long-term political prisoners, 69 students, 49 workers, 1 farmer, 13 military personnel, and 109 persons classified as 'political dissidents,' including teachers, journalists, artists, publishers, anti-eviction activists and street vendors' rights activists).

**POLITICAL PROSECUTIONS
IN SOUTH KOREA:
Cases brought to Trial, 1980-1992**



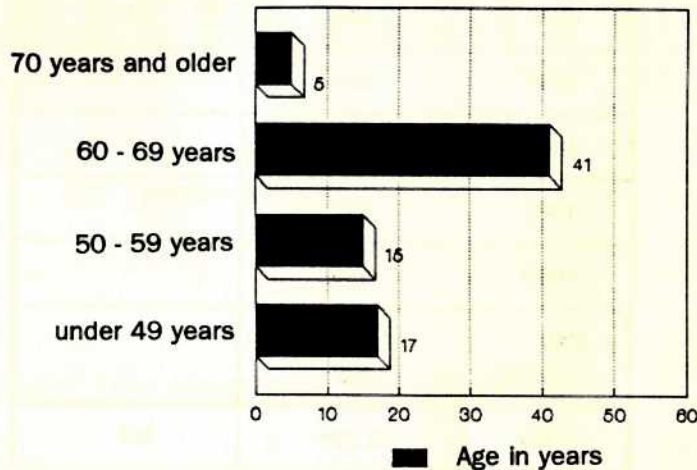
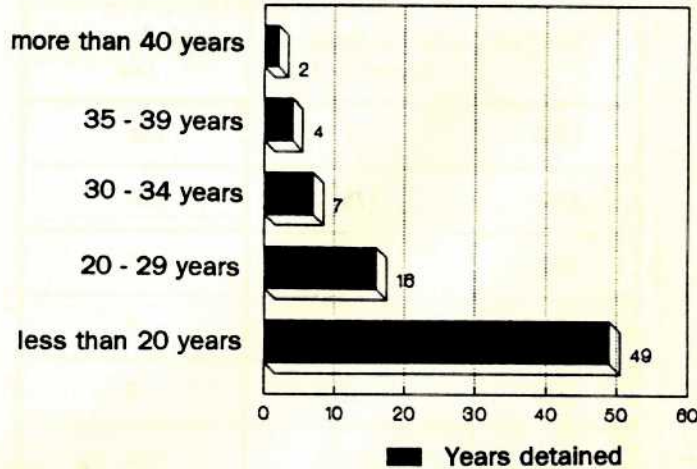
Source: Court Administration Office (Seoul, Korea)

**A trend in the Application of
National Security Law and Anti-Communist Law, 1980-1992**

| Year | National Security Law | Anti-Communist Law |
|------------------|-----------------------|--------------------|
| 1980 | 57 | 188 |
| 1981 | 175 | 113 |
| 1982 | 249 | 40 |
| 1983 | 187 | 7 |
| 1984 | 152 | 5 |
| 1985 | 213 | 4 |
| 1986 | 428 | 7 |
| 1987 | 613 | - |
| 1988 | 253 | - |
| 1989 | 331 | - |
| 1990 | 534 | - |
| 1991 - 9/1992 | 539 | - |
| TOTAL | 3,731 | 364 |

* The figures represent persons brought to a trial in the stated period. The period '1991-9/1992' represents all cases from January 1991, to September 1992, when this data was made available.

LONG-TERM POLITICAL PRISONERS IN SOUTH KOREA



Source: Min-ka-hyup (Council of Family Movement for Democratization) June 1, 1993

Long-Term Political Prisoners by Age (years) (as of June 1, 1993)

| | |
|---------------|-----------|
| 70 or older | 5 |
| 60 - 69 | 41 |
| 50 - 59 | 15 |
| 49 or younger | 17 |
| TOTAL | 78 |

Long-Term Political Prisoners by Years in Prison (as of June 1, 1993)

| | |
|-------------------|-----------|
| 40 yrs. or longer | 2 |
| 35-39 years | 4 |
| 30-34 years | 7 |
| 20-29 years | 16 |
| less than 20 yrs. | 49 |
| TOTAL | 78 |

* The figures above include *Kim Sun Myung* (69) holds a world record for the longest jail sentence in modern history. He has been detained for 43 consecutive years. Despite ill health, the government refuses to release him, "since he is not even 70."

A Survey of Prisoners of Conscience in S. Korea

(5 July 1995)

Minkahyup Human Rights Group(763-2606)

This report is the result of the investigation of the present situation of the prisoners of conscience by the Minkahyup Human Rights Group on 6 July 1995 through various sources such as the Student Union, the Labor Union, media reports, courts, detention centers, and families of prisoners.

The Present Situation of Currently Detained Prisoners of Conscience

As of 5 July 1995, there are 465 prisoners of conscience held in prisons, detention centers, police departments, etc.

Of these, 160 are students, 94 are laborers, 31 are soldiers/riot policemen, 105 are miscellaneous, 74 are long-term prisoners, and 1 is a farmer. Of the 465 prisoners of conscience, 59.8%, that is 278 prisoners of conscience, are held in suspicion of violating the National Security Law.

The following show divisions according to occupation and the laws applied to the prisoners.

Occupational Distribution

| Total | Students | Laborers | Long-term Prisoners | Farmer | Dissident/ Misc | Soldiers&Riot pol |
|-------|----------|----------|---------------------|--------|-----------------|-------------------|
| 465 | 160 | 55 | 75 | 1 | 107 | 34 |

Distribution of Laws Applied

| Total | NSL | ADL&LAV | ACDOD | Labor Related | Military Related | ACUMC |
|-------|-----|---------|-------|---------------|------------------|-------|
| 465 | 278 | 71 | 60 | 76 | 3 | 16 |

- NSL: National Security Law
- ADL: Assembly & Demonstration Law
- LAV: Law Against Violence
- ACDOD: Act Concerning Disturbance of Official Duties
- Labor-related laws include the prohibition of third party intervention, prohibition of violence, and prohibition of the obstruction of work/business.
- Military-related laws include the Military Criminal Code Law and the Law Concerning Anti-riot Combat Police.
- ACUMC: Act Concerning Use of Molotov Cocktails
- The total number of cases exceed the total number of political prisoners, since several laws concurrently charged to certain individuals.

The Current Situation of Long-term Prisoners of Conscience

As of 5 July 1995, the total number of prisoners of conscience held over 7 years for the National Security Law, Anti-communist Law, and the National Defense Act is 74. The following are distributions according to case involved, age, and sentence-term.

Age Distribution

| | |
|----------|----|
| Total | 75 |
| over 70 | 7 |
| 60-69 | 34 |
| 50-59 | 16 |
| under 49 | 17 |

Distribution of term served

| | |
|------------|----|
| Total | 75 |
| 40 or more | 2 |
| 35-39 | 3 |
| 30-34 | 9 |
| 20-29 | 12 |
| under 20 | 49 |

Distribution of Related Case

| | | | |
|--|----|--|----|
| Cases of visits to the North and those with acquaintances who mysteriously disappeared | 6 | Cases involving those who came to the South from the North | 1 |
| Cases of Korean emigrants to Japan | 7 | Cases involving Japan | 15 |
| Cases involving Korean students studying in Japan | 4 | Cases of fishermen kidnapped to the North | 4 |
| North Korean Spy cases | 25 | P.O.W. cases | 2 |
| Cases involving visits to North Korea | 3 | Miscellaneous | 1 |
| Cases of intension of going to North Korea | 2 | Western Illinois University Spy-Case | 4 |

The Monthly Distribution of Detainees since the

Inauguration of Kim Young-sam's government - 10 June 1995

Since the inauguration of Kim's government on 25 February 1993 until the present, 10 June 1995, the total number of prisoners of conscience detained for the National Security Law, Labor-related Law, Assembly & Demonstration Law, etc. is 1234.

Of these, 49.4%, that is 610 prisoners, are held for the violation of the National Security Law.

Moreover, during the 41 days between 1 May 1995 and 10 June 1995, the total number of prisoners of conscience detained is 161. This amounts to 3.92 persons detained per day.

1993 (A total of 195 detained\105 for the NSL)

| Month | Feb. | March | April | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
|----------------|------|-------|-------|-----|------|------|------|-------|------|------|------|
| Total detained | 7 | 7 | 4 | 19 | 19 | 43 | 28 | 7 | 13 | 28 | 20 |
| NSL | 1 | 3 | 2 | 16 | 6 | 16 | 12 | 5 | 7 | 20 | 17 |

1994 (A total of 774 detained\388 for the NSL)

| Month | Jan | Feb. | March | April | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
|----------------|-----|------|-------|-------|-----|------|------|------|-------|------|------|------|
| Total detained | 4 | 42 | 24 | 25 | 23 | 215 | 131 | 97 | 72 | 74 | 26 | 41 |
| NSL | 2 | 35 | 18 | 14 | 8 | 46 | 62 | 58 | 43 | 53 | 19 | 29 |

1995 (A total of 293 detained\122 for the NSL)

| Month | Jan | Feb. | March | April | May | June | July |
|----------------|-----|------|-------|-------|-----|------|------|
| Total detained | 4 | 42 | 24 | 25 | 23 | 215 | 131 |
| NSL | 2 | 35 | 18 | 14 | 8 | 46 | 62 |

• The number for the month of July in 1995 is between the 1st and the 5th of the month.

• Please note that three long term prisoners including the longest-term prisoner, Kim Sun-myung, were released on 15 August, 1995.

A LIST OF LONG-TERM PRISONERS

- 'Long-Term Political Prisoners' are defined to be those who have received sentences of more than seven years.
- The 'initial sentence' is the sentence that the prisoners first received. All capital punishment sentences have been commuted and some other sentences have been shortened.
- This list was possible through the works of 'Coalition of Family of Long-Term Political Prisoners,' of Minkahyup (Family Association for Democracy).

| NAME | AGE | DATE ARRESTED | INITIAL SENTENCE IN YEARS | YEARS IN PRISON |
|-----------------|-----|---------------|---------------------------|-----------------|
| Woo, Yong-gak | 67 | February 1958 | life | 38 |
| Yoon, Yong-ki | 70 | July 1959 | life | 37 |
| Ahn, Young-ki | 66 | August 1962 | life | 34 |
| Jang, Byung-rak | 62 | April 1962 | life | 34 |
| Choi, Ha-jong | 69 | March 1962 | life | 34 |
| Choi, Sun-mook | 68 | August 1962 | life | 34 |
| Hong, Myung-ki | 67 | April 1962 | life | 34 |
| Kim, In-soo | 73 | August 1962 | life | 34 |
| Yang, Hui-chol | 62 | April 1963 | life | 33 |
| Kim, Dong-ki | 64 | May 1966 | life | 30 |
| Choi, Soo-il | 56 | March 1965 | life | 31 |
| Lee, Kyung-chan | 61 | August 1965 | life | 31 |

| NAME | AGE | DATE ARRESTED | INITIAL SENTENCE IN YEARS | YEARS IN PRISON |
|-----------------|-----|----------------|---------------------------|-----------------|
| Hong, Kyung-sun | 71 | September 1967 | life | 29 |
| Lee, Gong-soon | 62 | December 1967 | life | 29 |
| Park, Wan-kyu | 66 | September 1967 | life | 29 |
| Shin, In-young | 66 | March 1967 | life | 29 |
| Yoon, Soo-gahb | 73 | September 1967 | life | 29 |
| Kim, Chang-won | 63 | June 1969 | life | 27 |
| Kim, Eun-hwan | 66 | September 1969 | life | 27 |
| Kim, Ik-jin | 66 | June 1969 | life | 27 |
| Oh, Hyung-shik | 66 | June 1969 | life | 27 |
| Yang, Jung-ho | 65 | June 1969 | life | 27 |
| Lee, Jae-ryong | 52 | June 1970 | life | 26 |
| Yoo, Jung-shik | 56 | 1975 | life | 21 |
| Cho, Sang-rok | 50 | 1978 | life | 18 |
| Jin, Chang-shik | 49 | July 1979 | life | 17 |
| Kim, Tae-ryong | 48 | July 1979 | life | 17 |
| Lee, Hon-chi | 44 | October 1981 | life | 15 |
| Sok, Dal-yoon | 65 | October 1980 | life | 16 |
| Ahn, Seung-yoon | 64 | December 1981 | life | 15 |
| Kim, Tae-hong | 50 | September 1981 | life | 15 |
| Park, Dong-woon | 51 | March 1981 | life | 15 |
| Sohn, Sung-mo | 66 | February 1981 | life | 15 |
| Sohn, Yoo-hyung | 67 | April 1981 | capital | 15 |
| Kim, Jung-mook | 61 | 1982 | life | 14 |
| Jung, Young | 55 | October 1983 | life | 13 |
| Ham, Joo-myung | 66 | April 1983 | life | 13 |
| Kim, Byung-joo | 71 | November 1983 | life | 13 |

| NAME | AGE | DATE ARRESTED | INITIAL SENTENCE IN YEARS | YEARS IN PRISON |
|-----------------|-----|---------------|---------------------------|-----------------|
| Lee, Sang-chul | 46 | December 1983 | 17 | 13 |
| Yoo, Jae-sun | 64 | November 1983 | life | 13 |
| Kim, Jang-ho | 55 | 1983 | life | 13 |
| Park, Chan-woo | 36 | July 1984 | 15 | 12 |
| Park, Soo-kwan | 52 | 1983 | life | 13 |
| Suh, Kyung-yoon | 56 | July 1984 | 15 | 12 |
| Hwang, Dae-kwon | 41 | August 1985 | life | 11 |
| Kang, Yong-joo | 34 | August 1985 | life | 11 |
| Kim, Song-man | 40 | August 1985 | capital | 11 |
| Kim, Yong-tae | 37 | 1985 | 14 | 11 |
| Kim, Yoon-soo | 57 | June 1985 | 15 | 11 |
| Lee, Jang-hyung | 63 | 1985 | life | 11 |
| Moon, Chol-tae | 66 | 1985 | life | 11 |
| Nah, Jong-in | 58 | April 1985 | 15 | 11 |
| Shin, Kwang-soo | 67 | February 1985 | life | 11 |
| Yang, Dong-hwa | 38 | August 1985 | capital | 11 |
| Choi, Sun-woong | 54 | January 1986 | 12 | 10 |
| Kim, Ki-moon | 66 | May 1986 | 14 | 10 |
| Lee, Byung-sul | 58 | July 1986 | 12 | 10 |
| Choi, Soo-yul | 31 | June 1987 | 15 | 9 |
| Kang, Hui-chul | 37 | April 1986 | life | 10 |
| Bang, Yang-kyun | 41 | June 1989 | 15 | 7 |
| Suh, Kyung-won | 59 | June 1989 | 15 | 7 |
| Suh, Soon-taek | 66 | January 1990 | 7 | 7 |

The numbers are as of November 1995.

ABOUT THE PUBLISHERS

International Korean Alliance for Peace and Democracy (IKAPD) was founded in 1990 in order to coordinate and consolidate the activities of Korean movement organizations in Europe, Australia, Canada, and the United States. IKAPD organizes educates, publicizes, and outreaches around the issues of peace, democracy, self-determination, and reunification of Korea. Member organizations are: Korea Coordination of Europe, Korean Youth Movement in Australia, Young Koreans United of Canada, and Young Koreans United of U.S.A.

Contact address: 2530 1/2 Crenshaw Blvd., Los Angeles, CA 90016, U.S.A. Tel.(213)732-5848.

International Committee for Peace and Self-Determination of Korea (ICPSK) is a multi-racial, multi-cultural international organization which aims to support human rights in South Korea, oppose US military intervention, and forge links with other groups concerned with social justice. ICPSK was formed on July 27, 1989, following the historic International Peace March in Korea with over 300 participants from 30 countries. Since then, members have been active in Europe, Australia, New Zealand, the Philippines, and the United States.

Contact address: 1314 14th St., N.W., Suite 6, Washington, D.C. 20005, U.S.A. Tel. (202)387-2989.

Korea Human Rights Network (KOHRNET) is a national coalition body which is composed of nine local human rights groups and organizations in south Korea. The member organizations are diverse in

character as well as in activity.

KOHRNET took organizational shape on June 20, 1994 as the permanent coordinating body to replace the Korea Human Rights Network for the UN World Conference on Human Rights (KONUHC) formed for the joint participation of Korean human rights organizations to the Vienna UN World Conference on Human Rights in June, 1993.

KOHRNET believes that all individuals and peoples are entitled to their basic human rights and fundamental freedoms upholding their human dignity and worth. *KOHRNET* also believes that all human rights are universal, interdependent, and interrelated as reaffirmed by the Bangkok NGO Declaration and Vienna Declaration and Program of Action of 1993. *KOHRNET* spares no efforts to implement the spirit and principles of the Universal Declaration of Human Rights, the two International Human Rights Covenants and other human rights conventions.

KOHRNET is committed to the realization of true democracy and human rights, having inherited the people's unyielding courage for self-determination and decades-long resistance against military dictatorships.

KOHRNET plans to consolidate the following tasks into its basic agenda:

1. Consultation and coordination of actions or campaigns on human rights issues

- Continuous efforts to publicize and provide legal aid for cases of human rights violations
- Efforts to reform the legal system and practices violating human rights
- Organization of a task-force to respond collectively to grave,

newly arising human rights violations

**2. Compilation and dissemination of information
on human rights**

- Monitoring and analyzing human rights violations
- Publication of a human rights newsletter
- Establishment of a computerized database system and information-sharing system

**3. Development and implementation of a human rights
education program**

- Human rights education to the general public
- Education and training of human rights activists
- Publication of human rights education material

4. International Solidarity Networking

- Effective responses to Urgent Actions or Urgent Appeals issued by international human rights groups
- International solidarity action campaigns in coordination with other international groups
- Active participation as member of the Asia-Pacific Human Rights Facilitating Team
- Participation in various human rights conferences and the UN Commission and Sub-Commission on Human Rights

KOHRNET - The Member Organizations

The list of member organizations of KOHRNET as of September, 1995;

Buddhists' Committee for Human Rights

Rm 1016 Jongro Officetel, 58-1 Nakwon-dong Jongro-gu
Seoul 110-320

Catholic Human Rights Committee

3F Catholic B/D Myongdong 2 ga, 1 Jung-gu Seoul 110-022
Tel (822) 777 0643 Fax (822) 777 6267

Democratic Legal Studies Association

Rm 301 Choyang B/D, Galwol-dong 71-12, Yongsan-gu Seoul 140-150
Tel (822) 715 9185 Fax (822) 715 9186

**Human Rights Committee of National Council of
Churches in Korea(NCCK)**

Rm 708 Christian B/D, 136-46 Yeonji-dong, Jongro-ku, Seoul 110-470
Tel (822) 764 0203 Fax (822) 744 6189

**Human Rights Committee of the National Alliance for
Democracy and Unification of Korea (NADUK)**

Rm 301 Samwoo B/D, 44 Dongsomun-ro 1 ga, Songbuk-gu Seoul 136-032
Tel (822) 747 4364/5 Fax (822) 747 8363

MINBYUN (Lawyers for a Democratic Society)

Rm 704 Century II B/D, 1595-2 Seocho-dong, Seocho-gu, Seoul 137-070
Tel (822) 522 7284 Fax (822) 522 7285

MINKAHYUP Human Rights Group

597-2 Changsin-dong, Jongro-ku Seoul 110-542
Tel (822) 763 2606 Fax (822) 745 5604

National Council of Bereaved Families for Democracy

651-30 Changsin 2 dong, Jongro-gu, Seoul 110-542
Tel (822) 763 4700 Fax (822) 743 2835

SARANGBANG Center for Human Rights

Rm 301 Choyang B/D, Galwol-dong 71-12, Yongsan-gu Seoul 140-150
Tel (822) 715 9185 Fax (822) 715 9186

Korea Human Rights Network (KOHRNET)

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