



*Korean Committee to Save Rep. Lee Seok-ki
of the Insurrection Conspiracy Case*

**Individual Submission to the UN Human Rights Council
3rd Cycle of Universal Periodic Review – 28th Session**

Republic of Korea

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Submitted by:

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Korean Committee to Save Lawmaker Lee Seok-ki of the Insurrection Conspiracy Case (hereinafter, the “KCSL”), established in 24 June 2015 by prominent religious leaders and leading human rights activists of Republic of Korea, campaigns to raise public awareness about the truth of so-called Insurrection Conspiracy Case and to save those who were and are still imprisoned. KCSL is dedicated to mandate to advocate the right to freedom of expression in connection with the National Security Law.

1. The Human Rights Council has repeatedly recommended to the Government of the Republic of Korea (hereinafter, the “ROK”) to amend the National Security Law (hereinafter, the “Law”) to prevent arbitrary application and abusive interpretation in the first and second UPR process. In the first UPR held in 2008, the United States of America recommended to amend the Law to “prevent abusive interpretation by the law.”¹ In the second UPR held in 2012, the Germany, Norway, Spain and the United States of America recommended again to amend the law to “provide clarity and prevent abusive interpretation of the law.”²

No progress made with the Law

2. However, there has been no progress in “amending” and “applying” the Law in line with the recommendations since the first review process. Rather, the ROK Government has continued to use the Law to intimidate and imprison people who exercise their right to freedom of expression.

Failure to amend the Law

3. First, the Government of the ROK including the administrative and legislative branches has failed to amend the law. On 30 April 2015, the Constitutional Court of Korea held in *2012heonba95 etc.*³ that the Law, article 2 (1) and article 7 (1), (3) & (5)—one of the most problematic provisions are not unconstitutional⁴ because the provisions are intended to punish acts that “pose a clear risk of substantially injuring the national security or the free and democratic basic order and the risk should not be necessarily specific and present due to the particular security situation that the nation has faced.”⁵

Continued use of the Law to restrict freedom of expression

4. Second, the Government of the ROK has continued to use the provisions of the Law and restricted exercise of the right to freedom of expression. The Government data (below) reveals that for the last 8 years, the Prosecutors’ Office opened investigation over 664 cases and 356 cases were indicted, which shows continued use of the Law.

		2009	2010	2011	2012	2013	2014	2015	2016	Total
Investigation	Booking	57	97	90	112	129	57	79	43	664
	Arrest	18	32	19	26	38	7	26	21	187
Punishment	Indicted	34	43	39	59	70	34	50	27	356
	Not-indicted	10	18	10	17	8	10	17	7	97
	Total	44	61	49	76	78	44	67	34	453

Table 1. The number of Investigation and Punishment in relation to the National Security Law (Source: The Grand Prosecutors’ Office)⁶

(a) Punishment for Expression and Possession of various forms of Expression

5. The ROK Government criminally punished individuals for possessing materials that contain contents of pro- or sympathetic to the Democratic People’s Republic of Korea (hereinafter, the “DPRK”) such as books,⁷ documents,⁸ files in email account,⁹ personal computer,¹⁰ CD¹¹ and USB¹² in many cases.
6. During the Asian games in 2014, the Ministry of Unification banned citizens from possessing or bringing DPRK flags into stadiums.¹³ In 2016, Hwang Seon, a national of the ROK, was arrested and charged under the Law with “causing social confusion” through a talk tour allegedly praising the DPRK regime.¹⁴ In 2016, Kim Hye-young, an activist from the Korean Alliance for an Independent Reunification and Democracy suffering from thyroid cancer, was sentenced to two years’ imprisonment in January after being arrested in July 2015 during a peaceful protest.¹⁵

(b) Restriction on on-line Speech

7. In 2014, the Supreme Court acquitted Park Jeong-geun of violating the Law by re-tweeting posts praising the DPRK between December 2010 and December 2011.¹⁶ The defendant argued the posts were satirical.
8. Individuals who posted writings in websites and online communities allegedly sympathetic to or pro- DPRK were subject to criminal punishment.¹⁷ One was convicted for tweeting and posting comments in the DPRK websites.¹⁸ Another was convicted for adding video clips to favorites on YouTube.¹⁹

(c) Extended Application to include Politicians, DPRK escapees and foreigners

9. In 2015, the Supreme Court upheld an earlier Seoul High Court decision which found a Parliamentarian Lee Seok-ki and six other members of the opposition Unified Progressive Party (hereinafter, the “UPP”) guilty of charges under the Law and the criminal law.²⁰ The decision came shortly after the Constitutional Court decision in late 2014 that dissolved the UPP because it had violated a basic democratic order.²¹

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In May 2013, Lee Seok-ki, invited by the *Gyeonggi* provincial committee of the UPP, lectured on characteristics of the escalated security concern in Korean peninsula as well as his opinion of what left-wingers like the audience should do to deal with the situation. The audience included 130 members of the provincial committee. The lectures took place in a closed space. There was no media coverage. It was one-time event and no follow-ups occurred. It is hardly regarded that expressions made at the lectures by Lee Seok-ki and six other members would trigger the audience to engage in imminent violent acts. Therefore, the expression at issue would in no way constitute conspiracy of and

incitement to an insurrection as well as a violation of the Law that posed a real, imminent threat to national security.

In 2015, Lee Seok-ki and six others were acquitted of conspiracy of an insurrection. However, the Supreme Court found Lee Seok-ki and Kim Hong-yeol guilty of incitement to an insurrection. The Supreme Court also found Lee Seok-ki and six others guilty of a violation of the Law for such as singing a song titled “the Comrades in a Revolution,” which is popular among activists, for having done small-group seminars, for delivering lectures, and for possessing books, USBs and notes.²²

Lee Seok-ki and six others were sentenced to imprisonment ranging from for two to nine years.

10. Several DPRK escapees have been convicted for espionage, which most of time were turned out to be false and therefore acquitted, in violations of the Law after administrative inquiry took place upon their entry to the ROK.²³
11. In 2015, US national Shin Eun-mi was deported for allegedly speaking in a positive manner about the DPRK.²⁴ In 2014, a Chinese student was deported for violating the immigration law by posting hundreds of online comments in support of the DPRK and critical of President Park.²⁵

Suggested Recommendations

12. The KCSL respectively requests the Working Group of the Human Rights Council to recommend that the ROK Government:
 - Repeal the Law, in particular article 7 or amend the Law in accordance with international standard including Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
 - Release those who remain imprisoned for a violation of the Law including Lee Seok-ki and others.

Endnotes

¹ A/HRC/8/40, para. 64

² A/HRC/22/10/Add.1, para. 31

³ The decision of the Constitutional Court (30 April 2015): *2012heonba95*, *2012heonba261*, *2013heonga26*, *2013heonba77*, *2013heonba78*, *2013heonba192*, *2013heonba264*, *2013heonba344*, *2014heonba100*, *2014heonba241*, *2015heonga7* (combined).

⁴ The Law, article 7

- (1) “Any person who praises, incites or propagates the activities of an antigovernment organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years:”
- (2) Deleted. <by Act No. 4373, May 31, 1991>;
- (3) Any person who constitutes or joins an organization aiming at the act as referred to in paragraph (1) shall be punished by imprisonment for a definite term of one or more years;
- (4) Any person who is a member of the organization as referred to in paragraph (3), and fabricates or circulates any falsies (sic) fact as to the matters which threaten to provoke any confusion of social order, shall be punished by imprisonment for a definite term of two or more years;
- (5) Any person who manufactures, imports, reproduces, holds, carries, distributes, sells or acquires any documents, drawings or other expression materials, with the intention of committing the act as referred to in paragraph (1), (3) or (4), shall be punished by the penalty as referred to in the respective paragraph;
- (6) Any person who has attempted the crime as referred to in paragraph (1) or (3) through (5), shall be punished;
- (7) Any person who prepares for or plots the crime as referred to in paragraph (3) with the intention of committing it shall be punished by imprisonment for not more than five years.

⁵ See supra note 3

⁶ http://index.go.kr/potal/stts/idxMain/selectPoSttsIdxMainPrint.do?idx_cd=1745&board_cd=INDX_001

⁷ The decision of the Seoul Central District Court, Case No. *2009gohap731*; The decision of Suwon District Court, Case No. *2011godan3759*; The decision of Jeju District Court, Case No. *2012gohap73*; The decision of the Seoul Central District Court, Case No. *2012gohap1501*

⁸ The decision of the Seoul Central District Court, Case No. *2009gohap731*; The decision of Suwon District Court, Case No. *2011godan3759*

⁹ The decision of Capital Defense Command’s General Military Court, Case No. *2011go10*; The decision of Jeju District Court, Case No. *2012gohap73*; The decision of Suwon District Court, Case No. *2011godan6207*; The decision of Seoul Northern District Court, Case No. *2012godan1421*

¹⁰ The decision of Suwon District Court, Case No. *2011godan3759*; The decision of Jeju District Court, Case No. *2012godan1520*; The decision of Bucheon Branch of Incheon District Court, Case No. *2013godan2370*

¹¹ The decision of Jeju District Court, Case No. *2012gohap73*; The decision of Jeju District Court, Case No. *2012gohap73*

¹² The decision of Suwon District Court, Case No. *2011godan3759*

¹³ US Department of State, human rights report 2014, available at <https://www.state.gov/j/drl/rls/hrrpt/2014/humanrightsreport/index.htm#wrapper>

¹⁴ Id.

¹⁵ Amnesty International, annual report 2016/17, p. 221 available at https://amnesty.or.kr/wp-content/uploads/bcp-attach/201617-AIR_english.pdf

¹⁶ CNN, South Korea ‘joke’ may lead to prison, 4 July 2012, available at <http://edition.cnn.com/2012/07/03/world/asia/south-korea-north-joke/>

¹⁷ The decision of the Uijeongbu District Court, Case No. *2010gohap328*; The decision of Suwon District Court, Case No. *2011godan6207*; The decision of Bucheon Branch of Incheon District Court, Case No. *2013godan2370*;

¹⁸ The decision of Suwon District Court, Case No. *2011godan3759*

¹⁹ The decision of the Seoul Central District Court, Case No. *2012godan2492*

²⁰ The decision of the Supreme Court, Case No. *2014doh10978*

²¹ Amnesty International, annual report 2015/16, p.220 available at <https://amnesty.or.kr/wp-content/uploads/bcp-attach/POL1025522016ENGLISH.pdf>

²² *See supra* note 20

²³ The decision of the Seoul High Court, Case No. 2013noh2728; Case No. 2013do9766; Case No. 2014do5939; Case No. 2014do4256; Case No. 2014gohap570

²⁴ *Id.*

²⁵ *See supra* note 13