



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

REPUBLIC OF KOREA

1. The Committee considered the second periodic report of the Republic of Korea (CAT/C/53/Add.2) at its 711th and 714th meetings, held on 11 and 12 May 2006 (CAT/C/SR.711 and CAT/C/SR.714), and adopted, at its 722nd meeting on 18 May 2006 (CAT/C/SR.722), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of the Republic of Korea, which was prepared in accordance with the Committee's guidelines, but was submitted with a four-year delay. The Committee commends the comprehensive written responses provided to the list of issues (CAT/C/KOR/Q/2), as well as the oral and audio-visual information provided during the consideration of the report. It also expresses its appreciation at the open and constructive dialogue with the high-level delegation.

B. Positive aspects

3. The Committee welcomes the significant progress made to ensure better protection of human rights in the period since the consideration of the first report. It also notes the State party's ongoing efforts to revise its legislation and undertake other necessary measures in order to give effect to the Committee's recommendations, and to enhance implementation of the Convention, including:

- (a) The more stringent application of the National Security Law, and measures to release and pardon individuals previously convicted under the law;
- (b) Measures to investigate and provide remedies for past violations of human rights, such as the enactment in 2000 of the Special Act to Find the Truth on Suspicious Deaths and the subsequent establishment of the Presidential Truth Commission on Suspicious Deaths, as well as the enactment of the Act on the Restoration of Honour and Compensation of Persons Engaged in the Democratization Movement in 2000;
- (c) The establishment in 2001, of the National Human Rights Commission with a mandate to investigate and remedy human rights violations and, in certain circumstances, to conduct inspections of detention and correctional facilities;
- (d) Measures to ensure that the fundamental legal safeguards for persons detained by the police are respected, including the revision of the Criminal Procedure Act in 1997 to enable judges (upon request) to examine individuals before arrest; the enactment of the Directive for Human Rights Protection during Investigation Procedures in 2002; and the General Measures to Reinforce Human Rights Protection during Investigation Procedures in 2005;
- (e) The establishment of human rights units or departments within the Ministries of Justice and National Defense, and in district public prosecutors' offices; and
- (f) The establishment of civilian monitoring bodies for detention and correctional facilities, such as the sexual violence monitoring board and the correctional administration advisory committee.

C. Subjects of concern and recommendations

4. While welcoming the oral assurances given by the delegation that it will make recommendations for changes in domestic law regarding torture, the Committee remains concerned that the State party has not incorporated a specific definition of the crime of torture in its penal legislation as set out in article 1 of the Convention.

Recalling the Committee's previous recommendation (A/52/44, para. 62), the State party should incorporate a definition of the crime of torture into its Criminal Code in accordance with article 1 of the Convention.

5. The Committee notes with concern that article 125 of the Criminal Code relating to violence and cruel acts is only applicable to specific individuals in investigation and trial processes, while other acts constituting torture that fall outside the scope of this article are dealt with under different provisions of the Criminal Code and are subject to lesser penalties.

The State party should review and, if necessary, amend its Criminal Code to ensure that all acts of torture are criminalized and punished in accordance with article 4, paragraph 2, of the Convention.

6. While acknowledging recent measures to limit the application of the National Security Law and to extend leniency to persons convicted, the Committee remains concerned that specific provisions of the law remain vague and that rules and regulations regarding arrest and detention continue to be applied in an arbitrary way.

Recalling the Committee's previous recommendation (A/52/44, para. 59), the State party should continue to review the National Security Law to ensure that it is in full conformity with the Convention, and that arrests and detentions under the law do not increase the potential for human rights violations. The State party should also include information, in its next periodic report, on the progress and outcomes of discussions within the National Assembly to repeal or amend the law.

7. Despite the existence of legislative and administrative measures to prevent and prohibit torture and other forms of ill-treatment, the Committee remains concerned at continuing allegations of torture and intimidation committed by law-enforcement officials, in particular in relation to the use of excessive force and other forms of ill-treatment, during arrest and investigation, and in detention and correctional facilities.

The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented for all law-enforcement personnel, as well as for all staff in detention and correctional facilities. The State party should also intensify its efforts to reinforce human rights education, awareness-raising and training activities in general, and with regard to the prohibition of torture in particular.

8. In view of the number of reported allegations of torture and/or other acts of cruel and inhuman or degrading treatment, and of complaints of human rights violations in general, the Committee is concerned about the relatively low rate of indictments, convictions and disciplinary measures imposed on law-enforcement officials. In this regard, the Committee is also concerned that the application of a statute of limitations on torture offences, in both criminal and civil law, may result in the lack of investigation, prosecution, and punishment of acts of torture, as well as in the lack of compensation and other remedies provided to victims of torture. Further, the Committee is concerned that there are no specific programmes for the treatment or rehabilitation of victims of torture.

(a) The State party should ensure in its legal system that all allegations of torture and ill-treatment are promptly and thoroughly examined, and that all victims obtain redress and have an enforceable right to fair and adequate compensation;

(b) In this regard, the Committee urges the adoption of the bill to exclude or suspend the application of a statute of limitations to crimes against humanity (including torture crimes), which is currently pending before the National Assembly;

(c) The Committee also urges the State party to establish comprehensive programmes for the treatment and rehabilitation (both physical and mental) of victims of torture and ill-treatment, including the right to fair and adequate compensation.

9. The Committee notes with concern that the right to have legal counsel present during interrogations and investigations is not presently guaranteed by the Criminal Procedure Act and is only permitted under guidelines of the public prosecutors' office.

The State party should take effective measures to ensure that fundamental legal safeguards for persons detained by the police are respected. In this regard, the Committee recommends the adoption of the relevant amendments to the Criminal Procedure Act, currently pending before the National Assembly, guaranteeing the right to have legal counsel present during interrogations and investigations.

10. While taking note of the information provided by the State party concerning the independence of the judiciary, the Committee remains concerned at the lack of sufficient guarantees of this independence, in particular that the evaluation process of judges may impact the security of their tenure.

The State party should take measures to ensure security of tenure of judges and to prevent interference in their judicial functions.

11. The Committee is concerned about reports that the urgent arrest procedure, by which individuals can be detained without an arrest warrant for a maximum period of 48 hours, is excessively resorted to, amounting to an abuse of the process.

The State party should continue to take all necessary legal and administrative measures to strictly regulate the use of the urgent arrest procedure and to prevent its misuse, and to guarantee the rights of persons detained in this manner. In particular, the Committee urges the prompt adoption of the relevant amendments to the Criminal Procedure Act, currently pending before the National Assembly.

12. The Committee is concerned at the absence of adequate legal protection of individuals, particularly of asylum-seekers, against deportation or removal to locations where they might be subjected to torture.

The Committee welcomes the delegation's oral assurances that it will study the matter of persons removed or returned to locations where they face a real personal risk of torture. The State party should ensure that the requirements of article 3 of the Convention apply when deciding on the expulsion, return or extradition of each case of non-citizens or persons of Korean nationality who may be returned to areas outside the jurisdiction of the Republic of Korea.

13. The Committee is concerned about the number of persons held in “substitute cells” (detention cells in police stations), which are reported to be overcrowded and in poor condition.

The State party should limit the use of “substitute cells”, clarify their function, ensure that they provide humane conditions for those detained, and complete the proposed construction of new detention facilities. The Committee also urges the State party to ensure that all detention facilities conform to international minimum standards.

14. The Committee is concerned about the high number of suicides and other sudden deaths in detention facilities. It notes that detailed investigations have not been conducted into the link between the number of deaths and the prevalence of violence, torture and other forms of ill-treatment in detention facilities.

The State party should take all necessary steps to prevent and reduce the number of deaths in detention facilities. Adequate provision of and access to medical care should be provided, and suicide prevention programmes should be established in such facilities. The Committee also recommends that the State party conduct a comprehensive analysis of the link, if any, between the number of such deaths and prevalence of torture and other forms of ill-treatment in detention.

15. The Committee expresses its concern at the number of suicides in the military and at the lack of precise information on the number of suicides caused by ill-treatment and abuse, including hazing, at the hands of military personnel.

The State party should prevent ill-treatment and abusive measures in the military. It is encouraged to conduct systematic research into the causes of suicides in the military and to evaluate the effectiveness of current measures and programmes, such as the ombudsman system, to prevent such deaths. Comprehensive programmes for the prevention of suicides in the military may include, inter alia, awareness-raising, training and education activities for all military personnel.

16. The Committee is concerned at reports that criminal trials regularly invoke and place great reliance on investigation records, often encouraging investigators to obtain confessions from suspects. The Committee also notes with concern that the number of convictions based on confessions under the National Security Law has not been provided.

The State party should ensure that statements made as a result of torture cannot be invoked as evidence in any proceedings. In this regard, the Committee recommends the adoption of the relevant amendments to the Criminal Procedure Act, currently pending before the National Assembly, which would place stricter conditions on the admissibility of written evidence in legal proceedings. The Committee also recommends that the State party include, in its next report, information on any specific jurisprudence excluding statements obtained as a result of torture, as well as precise data on the number of convictions under the National Security Law based on confessions, and information as to whether any investigations are conducted into whether such confessions are coerced, and/or anyone has been found guilty of torture in this connection.

17. The Committee is concerned at the prevalence of domestic violence and other forms of gender-based violence, including marital rape, and notes the low rate of indictments, resulting in part from settlements and agreements made in the investigation process. The Committee also notes that marital rape is not a criminal offence under the law.

The State party should ensure that victims of marital rape and gender-based violence have access to immediate means of redress and protection, that measures aimed at seeking settlement and agreements in investigation processes are not detrimental to women who are victims of abuse, and that perpetrators are prosecuted and punished. The Committee urges the State party to continue to undertake awareness-raising and training activities on the issue for the public at large and particularly for legislators, the judiciary, law-enforcement personnel and health-service providers. The Committee also urges the State party to take all necessary measures to ensure that marital rape constitutes a criminal offence.

18. The Committee regrets the absence of data, disaggregated by age and sex, on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials and on the related investigations, prosecutions and penal and disciplinary sentences, as well as statistical data on the number of women and children trafficked for purposes of prostitution. Information is also requested on any compensation and rehabilitation provided to victims. Information is further requested on the results of the studies recommended in paragraphs 14 and 15 above.

19. The State party should widely disseminate its report, as well as its reply to the list of issues, and the conclusions and recommendations of the Committee, in all appropriate languages through official websites, the media and non-governmental organizations.

20. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 9, 13, 14 and 15.

21. The State party is invited to submit its next periodic report, which will be considered as the third, fourth and fifth report, by 7 February 2012, the due date of the fifth periodic report.

22. The Committee notes that the State party is considering ratification of the Optional Protocol to the Convention. It also notes that the State party is considering making the declarations under articles 21 and 22 of the Convention, and that the Ministry of Justice has already issued an opinion to that effect. It encourages the State party to expedite its efforts in this regard.
