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HUMAN RIGHTS COMMITTEE

Eighty-eighth session

SUMMARY RECORD OF THE 2410th MEETING\*

Held at the Palais Wilson, Geneva,  
on Wednesday, 25 October 2006, at 3 p.m.

Chairperson: Ms. CHANET

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\* No summary record was issued for the 2409th meeting.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT  
(agenda item 6) (continued)

Third periodic report of the Republic of Korea (CCPR/C/KOR/2005/3;  
CCPR/C/KOR/Q/3/CRP.2; HRI/CORE/1/Add.125)

1. At the invitation of the Chairperson, the members of the Korean delegation took places at the Committee table.
2. Mr. KIM Chong-hoon (Republic of Korea), introducing the third periodic report of the Republic of Korea (CCPR/C/KOR/2005/3), said that, in order to ensure that it was comprehensive, the report had been prepared through the joint efforts of government ministries, the National Human Rights Commission and various Korean NGOs. As a founding member of the newly established Human Rights Council, the Republic of Korea stood ready to reaffirm its goals of fully attaining human rights protection and, through dialogue with the Human Rights Committee, further improving and strengthening its human rights policies and practices.
3. The National Human Rights Commission had been established in 2001 as an independent State body to deal with human rights issues in Korea. It proposed policies and legislation, conducted research on the current state of human rights, carried out investigations of human rights violations and provided human rights education. In 2006, the Human Rights Bureau had been established under the Ministry of Justice in order to oversee human rights policy and to devise and implement the National Plan of Action. The Human Rights Bureau conducted investigations into, and sought remedies for, human rights violations in the judicial sphere, undertook visits to prisons and detention centres, and developed plans to improve the prison system and its facilities. The Ministry of National Defence and the National Police Agency had set up their own human rights teams to take preventive measures against potential human rights violations.
4. In January 2006, the Ministry of Justice had introduced a bill that would amend the Criminal Procedure Act so as to bring it into conformity with international human rights standards. The bill provided, inter alia, for mandatory questioning of suspects prior to detention, for the appointment by the court of defence lawyers to assist suspects, and for the participation of defence counsel in the questioning or investigation of all suspects. The bill also included provisions to enhance the protection of crime victims during investigation and trial proceedings, including the questioning of witnesses through video-broadcasting equipment and a system for recording investigation proceedings. Furthermore, in June 2006, the Ministry of Justice had taken steps to amend the regulations governing investigations in order to enhance the human rights protection afforded to suspects, including investigating without detention, expansion of the conditions in which a person of trust could be present, and reinforcement of protection for young people, disabled people and foreigners. In addition, a policy review body had been set up to promote the protection of crime victims through the provision of financial assistance for private victim support foundations and through advocacy of amendments to legislation to prevent secondary victimization of crime victims in judicial proceedings.

5. There had been a number of positive developments in the area of women's rights. In March 2005, the "family head system" had been abolished, which meant that children could take their mother's surname if they wished. A number of amendments to the Civil Code, which would enter into effect in 2008, provided for the possibility of changing a child's surname if that was found to be in the child's interest. To increase women's participation in public service, a new gender equality scheme had been introduced in 2003, in conjunction with a five-year plan for increasing appointments of women to managerial positions in the public service. The proportion of women participating in governmental commissions had increased dramatically from 6.9 per cent in 1993 to 32.2 per cent in 2005 following the introduction of a scheme aimed at including their viewpoints in policy decision-making. The Government was taking measures to increase women's employment opportunities by improving childcare policies and providing incentives to firms with a high proportion of female workers. Two new acts had been promulgated to provide for the prevention and punishment of sexual exploitation, and for the protection of victims, introducing the concepts of "victims of the sex trade" and "human trafficking for the purpose of the sex trade". The acts also imposed heavy penalties for the organization of prostitution or human trafficking.

6. A number of steps had been taken to improve the treatment of prisoners, noteworthy among which was the reform of rules relating to the punishment and physical restraint of prisoners so as to ensure greater transparency and strengthen control mechanisms. After consultation with external corrections specialists, the Ministry of Justice had proposed amendments to the Penal Administration Act that would significantly improve prisoner treatment, such as the elimination of vetting of correspondence, the requirement to conduct regular medical examinations and the establishment of special rules for the treatment of female, elderly and disabled prisoners. In addition, a monitoring body, composed of representatives of civil society organizations and other institutions, had been set up with a view to preventing the sexual harassment of female prisoners. Other measures to improve the infrastructure of facilities were also being taken.

7. Since 2000, bills proposing the amendment or repeal of the National Security Act had been submitted repeatedly to the National Assembly, but they were still under consideration. In 2006, 12 persons had been arrested under the Act. The right to organize and to bargain collectively was guaranteed to public officials through the adoption of the Act relating to Public Officials' Organization and Management of Labour Unions.

8. Between its ratification of the 1951 Convention relating to the Status of Refugees and 2002, the Republic of Korea had granted refugee status to only two persons. Following the reform of its refugee policy in 2003 and up to the present, it had granted refugee status to 50 persons. To improve the system of refugee recognition, a research committee composed of public officials, lawyers and academics had been established to pursue reform in the area of refugee legislation. The Committee's recommendations included abolishing the one-year maximum period for recognition as a refugee, guaranteeing the status and treatment of recognized refugees, and granting humanitarian status and permission to work for persons not recognized as refugees.

9. His Government was currently engaged in a procedure to withdraw its reservation to article 14, paragraph 5, of the Covenant. It had acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2006. Its accession to the Optional Protocol to the Convention against Torture and its withdrawal of its reservations to articles 21 and 22 of that Convention were currently under consideration.
10. Civil and political rights had progressed a great deal in the Republic of Korea, and the corresponding legislation and practices were undergoing constant improvement. In recognition of the fact that there was always room for further development of the protection and promotion of human rights, he looked forward to the opportunity to engage in dialogue with the Committee and to incorporate its recommendations into government policies. Countless individuals had made sacrifices to enhance the protection and promotion of human rights in the Republic of Korea, a fact which strengthened the commitment of the Government to promoting human rights and complying fully with its human rights obligations.
11. Mr. JANG Hyun-cheol (Republic of Korea), replying to question 1 of the list of issues (CCPR/C/KOR/Q/3/CRP.2), said that, in the case of conflict between the Covenant and the Republic of Korea's domestic law, the Covenant took precedence and domestic law was modified to conform to the Covenant. The Covenant had the same effect as domestic law and could be invoked in court. In practice, however, court decisions were usually made in conjunction with constitutional provisions and other domestic law.
12. Ms. PARK Min-jeong (Republic of Korea) said that of the 24 requests for indictment or investigation made by the National Human Rights Commission between 2001 and 2005 in relation to petitions submitted to it, there had been 7 indictments, 12 acquittals and 5 cases that were still under investigation (question 2). Statistics concerning the status of recommendations made by the Commission for national and local authorities and detention and protective facilities from 2001 to 2006 could be found in the written replies to the list of issues (document without a symbol).
13. Mr. JANG Hyun-cheol (Republic of Korea) said that the Government was currently engaged in procedures for withdrawing its reservation to article 14, paragraph 5, of the Covenant (question 3). Pursuant to the Constitution, under martial law criminals who had committed particular crimes were subject to the single-trial system, except in the case of crimes carrying the death sentence. Given the fact that martial law was proclaimed "in time of public emergency" (wording of article 4 of the Covenant), the use of the single-trial system under martial law was not held to be in conflict with article 14, paragraph 5. For that reason, his Government was considering withdrawing its reservation rather than revising its legislation.
14. Ms. PARK Min-jeong (Republic of Korea) said that while her Government endeavoured to respect fully its obligations under the Covenant and the Optional Protocol, it had encountered difficulty in implementing some of the Committee's recommendations on individual communications owing to their inconsistency with existing court decisions (question 4). It was currently engaged in conducting joint research, involving numerous government bodies and agencies, with a view to reconciling the Committee's recommendations with its domestic law and the protection of citizens' rights.

15. Mr. JANG Hyun-cheol (Republic of Korea) said that, since the inception of the current National Assembly in June 2004, three bills concerning counter-terrorism had been submitted to the Assembly and were currently under consideration by its Legislation and Judiciary Committee (question 5). The counter-terrorism bills related to the establishment of a counter-terrorism meeting and centre, a warning system for travellers, measures for protecting government and public facilities, military support for the protection of important facilities prone to terrorism, and plans for compensation for damage to individuals and property. All three bills made provision for searches, telephone-tapping, interception of communications and deportation so long as those were in conformity with the Criminal Procedure Act and the Communications Privacy Protection Act.

16. Mr. KANG Ji-sik (Republic of Korea) said that the bill on non-regular workers currently pending in the National Assembly prohibited discrimination on the basis of form of employment and imposed fines for non-compliance (question 6). Following adoption of the bill, the Government planned to establish an anti-discrimination committee within the Labour Relations Commission. In August 2006, the Government had announced a plan to convert approximately 54,000 short-term or non-regular workers to unlimited-term or regular workers by 2007. The labour laws fully applied to foreign workers, and employers were prohibited by law from discriminating against workers on the basis of nationality and from discriminating against union members on the basis of race.

17. Legislation had been enacted to promote employment and vocational training for disabled persons. A quota system had been introduced whereby companies with more than 50 employees must employ at least 2 per cent disabled staff. Companies employing more than the legally required proportion of disabled persons, those taking on new disabled staff and institutions offering vocational and other training for persons with disabilities received government subsidies.

18. Mr. KANG Ji-sik (Republic of Korea) said that of the 39,467 perpetrators of domestic violence identified between 2004 and June 2006, 5,743 had been prosecuted and punished accordingly (question 7). Special prosecutors had been appointed to handle cases of domestic violence, and networks had been established with external organizations and experts working in the field.

19. Of the 20,751 complaints of rape filed between April 2004 and June 2006, 9,929 had been brought to trial and 8,216 persons had been convicted. Sentences ranged from capital punishment to imprisonment. The victim's failure to resist did not automatically lead to dismissal of the charges. Although there was no legal impediment to imposing punishment for spousal rape, no person had thus far been convicted of that crime. Measures would be taken to bring about attitudinal changes among the judiciary, thus ensuring that perpetrators of spousal rape were brought to justice.

20. Following a ruling by the Constitutional Court declaring the "family head system" unconstitutional, the National Assembly had passed the amendment to the Civil Code providing for its abolition in March 2005 (question 8). Once a new identification system had been established, the system would be formally abolished.

21. Ms. PARK Min-jeong (Republic of Korea) said that the law prohibited prenatal gender determination (question 9). Between 2001 and 2005, eight doctors and nurses had lost their medical licences for having violated those provisions. The adoption of relevant policies, including the promotion of sex education for teenagers and awareness campaigns concerning the prohibition of foetal gender determination, had facilitated the progressive eradication of such practices. The Government also provided financial support during the prenatal and postnatal periods.

22. Mr. LEE Seong-ryong (Republic of Korea) said that the authorities offered advice and carried out regular inspections in workplaces with a high proportion of female staff in order to prevent and combat gender-based discrimination (question 10). Between 2003 and 2006, over 4,000 workplaces had been inspected. Measures had been taken to further promote the employment of women in public enterprises and firms with more than 500 employees, and incentives were being provided for companies with good equal-opportunity practices. The active promotion of the participation of women in government had led to an increase in the proportion of women in government committees from 6.9 per cent in 1993 to 32.2 per cent in 2005. A five-year plan for the employment of women in managerial positions had been introduced in 2003; as a result, the proportion of high-ranking female public officials had increased from 4.8 per cent in 2001 to 7.4 per cent in 2006. Women held 14 per cent of seats in the National Assembly and accounted for 16.8 and 11.5 per cent of judges and prosecutors respectively.

23. Mr. LEE Moon-han (Republic of Korea) said that data on the prosecution and punishment of investigating officers for violent or cruel treatment of suspects and statistical information on criminal proceedings instituted against prison guards for violence or cruel treatment of inmates were provided in the written reply to question 11 of the list of issues. Only two investigators had been suspended on charges of violence or cruel treatment of detainees between 2002 and 2005. One prison guard was currently being tried for sexual harassment of a female inmate and charges had been brought against senior officials for attempting to conceal the crime. Measures were being taken to prevent the recurrence of such offences. Between 2000 and 2005, US\$ 466,321 had been paid in compensation to victims of violence or cruel treatment by prison guards.

24. Amendments to the Penal Procedure Code aimed at curbing reliance on confessions in criminal proceedings had been submitted to the National Assembly (question 12). The new provisions covered, inter alia, the imposition of stricter admissibility criteria for testimonial evidence and the presence of a lawyer during all interrogations in order to reduce the possibility of evidence being obtained under duress. The Ministry of Justice had issued guidelines on human rights protection during investigations, which discouraged confession-based investigation methods.

25. Mr. LEE Seong-yong (Republic of Korea) said that, at present, the only rules applicable to the presence of lawyers during interrogations were the internal police guidelines (question 13). Pursuant to the amended Penal Procedure Code, restrictions on the presence of defence counsel would only be imposed in circumstances which undermined the purpose of the investigations.

26. With regard to compliance with article 9, paragraph 3, of the Covenant, he said that legislative amendments were currently being considered to provide for mandatory interrogation prior to detention and the expansion of conditional release provisions (question 14). Without a detention order, suspects must be released within 48 hours of their arrest. Any person arrested on criminal charges must be brought promptly before a judge. Suspects were eligible for conditional release pending trial, subject to certain conditions established by law. No steps had been taken to extend the period of pretrial detention.

27. Mr. CHOI Jae-young (Republic of Korea) said that restrictions and punishment could be imposed on prisoners in order to maintain discipline and order. Violations of prison rules were graded according to their gravity; punishment was commensurate with the gravity of the violation and took account of the prisoner's personal circumstances. In order to prevent the excessive use of instruments of restraint, the condition of prisoners subjected to such punishment was monitored closely. Instruments of restraint must not cause unnecessary pain or injury.

28. Prisoners were informed about petition procedures upon arrival. Relevant information was also posted on a notice board. Prisoners were further assured that filing petitions would not jeopardize their conditions of detention, and those wishing to file a petition were provided the relevant form.

29. Ms. PARK Min-jeong (Republic of Korea) said that persons committed to psychiatric institutions were eligible for six-monthly examinations to establish whether continuation of treatment was necessary. Periodic inspections were carried out in mental health institutions to ensure compliance with guidelines on the admission, management and discharge of patients. Government-appointed human rights protection officers monitored conditions in mental health institutions, nursing facilities and residential care facilities for psychiatric patients. The officers received regular training by human rights protection experts. Patients or their spouses had free access to medical records, unless it was considered that that facility might jeopardize treatment.

30. Mr. BHAGWATI, Country Rapporteur, commended the State party for its accurate and concise replies to the Committee's questions. He would welcome examples of cases where international instruments had been given precedence over national legislation in domestic court proceedings. The delegation should explain why the Views adopted by the Committee under the Optional Protocol procedure had only been implemented in 5 out of 11 cases. He asked what measures were being taken in cases where State party legislation impeded implementation of the Committee's Views. It would be useful to know when the State party intended to withdraw its reservation to article 14, paragraph 5, of the Covenant. He requested detailed information on selection procedures, gender distribution and working methods of the National Human Rights Commission. He wished to know whether the Commission's recommendations were binding and, if not, whether the Government was required to justify non-compliance. Additional information was required on counter-terrorism measures and their impact on the rights guaranteed in the Covenant.

31. Mr. ANDO asked what were the definitions of short-term, long-term and permanent employment. He wondered under what circumstances a person working on a permanent contract could be dismissed. Although trade-union and labour-relations legislation prohibited discrimination against workers on grounds of race, he wondered whether discrimination on grounds of nationality was also prohibited. The problem of foreign irregular workers was

growing in countries that were becoming more open to immigration, since domestic enterprises took advantage of the immigration situation to find cheap labour. Efforts should be made to combat international mafia-type organizations that recruited people from developing countries to be used as cheap labour elsewhere. He wished to know whether such organizations operated in Korea and, if so, what measures were being taken to rectify the situation.

32. He asked what procedures were in place to implement the provisions of the amended family law on the child's right to take his or her mother's family name, and under what circumstances that was possible. He wished to know how a child's nationality was chosen in the event that his or her parents were of two different nationalities. He wondered whether distinctions were made between children born in and out of wedlock in respect of their right to inherit property from their parents.

33. Although a number of domestic violence cases had already come before the courts, some 34,000 cases remained to be heard. He wished to know the status of those cases. He asked whether public shelters were provided for victims of domestic violence, and how victims who were taken into shelters were protected from the people who had abused them. He also wished to know whether the Government intended to change legislation on marital rape, which had thus far not been recognized as a crime. He requested further information on the new family identification registration system that was being planned. Although the "family head system" would be abolished in law by 2008, a change in attitudes would be required to ensure that it was abolished in practice. He wished to know what measures the Government had taken to raise public awareness of the change of system.

34. Turning to question 9 of the Committee's list of issues, he asked whether it was possible to distinguish between legal and illegal motives for abortion, how the Government had assessed and investigated the situation with regard to the abortion of female foetuses, and how that practice was being prevented. The Committee had been informed of the case of a factory that made plastic elements for liquid crystal displays for digital equipment, in which irregular female workers had been exposed to toxic chemicals and suffered physically and mentally as a result. He wished to know whether the Government was aware of that case, and what was being done to remedy the situation. He wondered whether efforts were being made to change societal attitudes to gender equality, and whether a quota system would be established to ensure adequate female participation in public life. Further efforts were needed to establish childcare centres and change male attitudes, in order to enable women to continue working after having children.

35. Ms. WEDGWOOD asked how defendants were treated when they were arrested and taken into police custody. She was concerned that the lack of timely access to a lawyer could result in persons under arrest being mistreated by police officers. Counsel should be provided swiftly, should always be present during questioning, and should also be granted access to defendants outside of questioning. She had been surprised by the Government's reasons for not allowing a defence counsel to be present during police questioning. In the event of malpractice by the defence counsel, he or she should be replaced, rather than merely dismissed. An independent investigative body should be established to ensure that detainees in police custody were treated appropriately, and police officers should be subject to civil liability. Video recordings should be made of interrogations since they provided useful evidence in court and



also served as a deterrent to ill-treatment during questioning. In extreme cases of ill-treatment, police officers should be subject to criminal liability. She requested clarification on the duration of pretrial detention.

36. Turning to the issue of the use of disciplinary measures in jails, she said that over 30 per cent of complaints to the National Human Rights Commission concerned the abuse of disciplinary authority in detention facilities. She expressed concern that although the period of solitary confinement for disciplinary purposes had been reduced to one month, wardens still had the authority to impose an unlimited number of solitary confinement penalties, which could result in individuals being held in isolation for long periods. Extended periods of solitary confinement were particularly dangerous for prisoners' mental health. External inspectors should be allowed access to detention facilities to ensure that the authority to impose solitary confinement was not being abused. Particular caution should also be used when imposing disciplinary measures involving physical restraints such as face-masks, handcuffs and chains. Prisoners being restrained with such apparatus should not suffer any pain. Violent prisoners should be separated from other inmates, rather than subjected to physical restraints.

37. Mental health institutions should be subjected to external inspections. External inspectors should have an absolute right of access to patient records. Abuse of psychiatric patients in isolated facilities was a common problem in many countries, and adequate administrative and legislative measures must be taken to ensure that the problem was eliminated.

38. Sir Nigel RODLEY asked when the Amendment Bill to the Law on Criminal Procedures would come into force and which amendments were at risk of being rejected. With reference to question 11 of the list of issues, he requested additional information on the nature of the charges brought against the prosecutor and investigative officers in the case referred to in paragraphs 121 and 122 of the periodic report. Three years' imprisonment seemed a lenient sentence for causing death by torture. It would be useful to have details of the outcome of the appellate court case. If the accused had been acquitted, the delegation should explain how the court had reached that decision and what further proceedings could be instituted. He would welcome the delegation's comments on reports from the Korean Bar Association that sleep deprivation, beatings and intimidation of suspects were widely practised by interrogators.

39. Turning to question 12, he requested clarification of whether all pretrial confessions that were challenged before a court did not constitute relevant evidence before the court. If that was not the case, the delegation should explain the meaning of its reply to question 12 and how the system actually worked.

40. With reference to question 13, he asked whether the participation of defence counsel was allowed from the moment of a suspect's first apprehension. If not, he wished to know what was meant by the term "initial stage of the investigation" in the delegation's reply to question 13. He wondered whether the reasons listed in the written reply to question 13 were the only justifications for excluding defence counsel, and whether the reasons advanced for denying Song Doo-yul access to his defence counsel in 2002 had been among those in that reply. It would also be useful to learn what restrictions could be placed on the participation of defence counsel, who could order such restrictions and what other measures ensured that abuses did not occur when such restrictions were in place.

41. In connection with question 14, he requested additional information on whether the recourse made to urgent arrest was excessive and whether detainees suffered abuses during such arrest.

42. Mr. O'FLAHERTY asked whether the State party was considering withdrawing its reservation to article 22 of the Covenant. It would be useful to learn what position the Government currently took on that reservation, and whether it intended to heed the Committee's recommendation in its previous concluding observations (CCPR/C/79/Add.114, para. 20).

43. Additional information should be provided on the Act relating to Employment of Foreign Workers. In particular, the meaning of the term "unjustifiable discrimination" should be explained. The delegation should indicate what remedies were available if such discrimination occurred. It would be interesting to know whether the 2 per cent mandatory recruitment of people with disabilities also applied to government institutions. If so, he asked what were the consequences of a violation of that rule by such an institution.

44. The Committee would welcome the delegation's comments on the apparent lack of compatibility between article 92 of the Military Criminal Code and the Covenant, and any plans to amend that Code in order to bring it into line with the provisions of the Covenant. He asked whether declared homosexuals could serve in the military and, if not, to what extent such a prohibition raised issues under the Covenant.

45. Mr. AMOR asked how many people with disabilities were represented by the 2 per cent employed by companies with over 50 employees. It would be useful to learn whether particular jobs were reserved for people with disabilities, and whether those people were offered education and training opportunities. He wondered to what extent people with disabilities were educated and trained in special centres or were integrated with the rest of the population.

46. Given that many rapes were not reported, further details should be provided on the estimated total number of rapes committed in the State party. It would be interesting to know whether the practice of aborting a foetus because of its gender was widespread. It was unclear whether the authorities took any measures to combat misogynistic attitudes in society in general.

47. Additional information would also be welcome on services available to people with mental illnesses. In particular, it would be useful to know whether they could be treated in facilities other than hospitals.

The meeting was suspended at 5.30 p.m. and resumed at 5.45 p.m.

48. Ms. Chanet (Chairperson) resumed the Chair.

49. Mr. KIM Chong-hoon (Republic of Korea) said that the Covenant had not been invoked before domestic courts as the sole ground in any case. It had been invoked only in addition to provisions of domestic law.

50. The National Human Rights Commission was composed of 11 members, 4 of whom were women. They were all human rights experts who had been recommended by the three branches of Government. The Government considered all recommendations made by the Commission and had implemented about 70 per cent of them to date.

51. The treaty bureau within the Ministry of Foreign Affairs and Trade was currently examining the withdrawal of the reservation to article 14, paragraph 5, of the Covenant. That examination was nearing its final stages.

52. Before getting married, a couple could opt for their future offspring to carry their mother's surname. In that case, the decision was included as part of the written marriage application and became legally binding on marriage. Parents also had the right to request that their child's surname should be changed in the best interests of the child. Such changes could be made with immediate effect. Since the 1977 revision of the Civil Code, any discrimination between legitimate and illegitimate children had been abolished, including in connection with inheritance rights.

53. When foreign workers were recruited, the Government concluded memorandums of understanding with the Governments of the workers' countries of origin. Responsibility for the recruitment process then devolved on the foreign Governments. If the provisions of any memorandum were violated, the Government stopped recruiting workers from the country concerned.

54. At the end of 2003, there had been 175 counselling centres and 37 shelters for victims of domestic violence. Data on hotline services and domestic violence counselling centres were provided in a table in paragraph 79 of the periodic report.

The meeting rose at 5.55 p.m.