



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

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COMMITTEE AGAINST TORTURE

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

**Second periodic reports of States parties due in 1996**

**Addendum\***

**REPUBLIC OF KOREA**

[27 May 2004]

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\* For the initial report, see CAT/C/32/Add.1; for its consideration, see CAT/C/SR.266 and 267 and Official Records of the General Assembly, Fifty-second Session, Supplement No. 44 (A/52/44), paras. 44-69.

The annexes to the present report submitted by the Government of the Republic of Korea can be consulted at the secretariat.

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## **Introduction**

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by the Republic of Korea on 9 January 1995 and took effect on 8 February of the same year. This is the second periodic report to the Committee against Torture submitted in accordance with article 19 of the Convention.
2. This report covers the review period from June 1996 to May 2000. However, where relevant, this report occasionally mentions events that occurred before or after the review period.
3. This report is set out in accordance with the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14/Rev.1), which were adopted by the Committee on 30 April 1991 and revised on 18 May 1998.
4. Concluding observations and recommendations by the Committee regarding the initial report of the Republic of Korea have been duly taken into consideration in drafting this report.
5. The Government of the Republic of Korea has submitted a core document (HRI/CORE/1/Add.125) explaining the Republic of Korea's constitutional structure, its political framework, and the general framework within which human rights are protected. This second report should be read in conjunction with the core document.
6. The basic information and framework explained in the general information part of the initial report of the Republic of Korea still apply. Any changes of great significance in the context of the Convention are mentioned in the relevant sections of this report.
7. During the period under review, there were a number of cases, complaints, inquiries and indictments related to the Convention. These are presented and explained in the relevant sections of this report.

### **Recent human rights practices in the Republic of Korea**

8. In 1998 the "Government of the People" was launched under the leadership of President Kim Dae-jung, a human rights activist and a victim of torture himself. In accordance with the Government's "Human Rights Priority Policy", numerous reform measures were adopted in various sectors of Korean society.
9. As a result of these reform measures, human rights conditions in the Republic of Korea have improved remarkably. First, the Government began placing top priority on rooting out violations of human rights such as torture and harsh treatment during investigations. Investigators are now required to follow due process.
10. Second, for humanitarian reasons, the Government released, reduced the sentences of, or pardoned a large number of prisoners who were serving prison terms for violations of the National Security Law. As a result, there are now no unconverted long-term prisoners who were convicted of espionage or other activities linked to North Korea. In applying the National Security Law, the Government is trying to eliminate subjective interpretations of the law by law enforcement officials. As a result, the number of suspects detained for violating the National

Security Law dropped by 23 per cent in 1999 and another 58 per cent in 2000, compared to the previous year. In addition, the Government is seriously considering revising some clauses in the National Security Law, which have been the targets of criticism from international human rights organizations, in order to more closely align them with international human rights standards.

11. Third, the Government is taking steps to protect human rights through the application of due process of law. All the prosecutors' offices, from the national to the local level, have installed rooms where a suspect can consult with his/her lawyer. The Government provides inmates with more opportunities to meet with their families, allows them to subscribe to newspapers, and permits them to watch television programmes. Based on a presumption of innocence, the Government allows unconvicted prisoners to wear his/her own clothes while on trial, and operates meeting houses in which a married prisoner can meet his/her spouse.

12. Fourth, the Ministry of Justice has reinforced the educational system for juvenile prisoners to help them better adapt to society after their release. It provides supportive educational programmes such as foreign language classes and computer courses.

13. Fifth, the Government has enacted special laws to restore the reputation of victims of the repression of pro-democracy movements by past authoritarian regimes. Such laws include the Special Act to Find the Truth on Suspicious Deaths and the Act on the Restoration of the Honour and Compensation of Persons Engaged in the Democratization Movement, through which the truth of suspicious deaths may be revealed and victims and their bereaved families compensated.

## **I. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION**

### **Article 2**

14. Since the submission of its initial report, the Government has taken many measures to ensure that human rights are more substantially protected in the Republic of Korea. These measures are explained below. The enactment of the National Human Rights Commission Act in 2001 should be noted particularly as a significant development.

#### **The National Human Rights Commission**

15. The National Human Rights Commission Act of the Republic of Korea was passed and promulgated in May 2001. Pursuant to the Act, the National Human Rights Commission (NHRC) was established in November 2001. The Act includes provisions on investigations of violations of human rights and remedies for such violations.

16. Article 19 of the Act stipulates that the NHRC shall perform investigations of and provide remedy for human rights violations. According to article 30, paragraph 1 of the Act, if human rights are violated in the performance of their duties by personnel of the Government, local governments, or detention or protective facilities, the person whose human rights are violated, or any other person or organization that discovers such violations, can file a petition to the NHRC. The NHRC is then obliged to investigate any human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment.

17. The Act also prescribes investigation procedures, recommendations for remedies, a process for accusation, recommendations for disciplinary action, requests for legal aid for sufferers, and recommendations for urgent relief measures. A diagram overleaf shows the complaint handling process.

18. As of November 2002, a total of 2,650 petitions of human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment, were filed with the NHRC.

19. Supporting the activities of the NHRC, the Government continues to strive to eliminate all acts of torture in the workings of its organs. The National Human Rights Commission Act is attached herewith for reference.\*

### **The Ministry of Justice**

20. Through its directives put into force in April and October 1998, the Ministry of Justice established a new principle of investigation without detention, and prohibited investigative agencies from arresting suspects solely for the convenience of those agencies. As a result, the ratio of suspects detained during investigations decreased from 7.3 per cent in 1997 to 4.2 per cent in 2001.

21. In March 2000, the Supreme Public Prosecutor's Office designated a department within each district prosecutor's office to investigate human rights violation cases and monitor detention facilities for possible human rights abuses. In a similar vein, each high public prosecutor's office has appointed a supervising public prosecutor for human rights violations for each district prosecutor's office that falls under its jurisdiction. Among other duties, the said prosecutor has a mandate to receive and investigate complaints from persons alleging that they have been subjected to torture or other inhumane acts in the course of investigation, or from others having knowledge of such abuses.

### **The amendment to the Penal Procedure Code on the detention of a suspect**

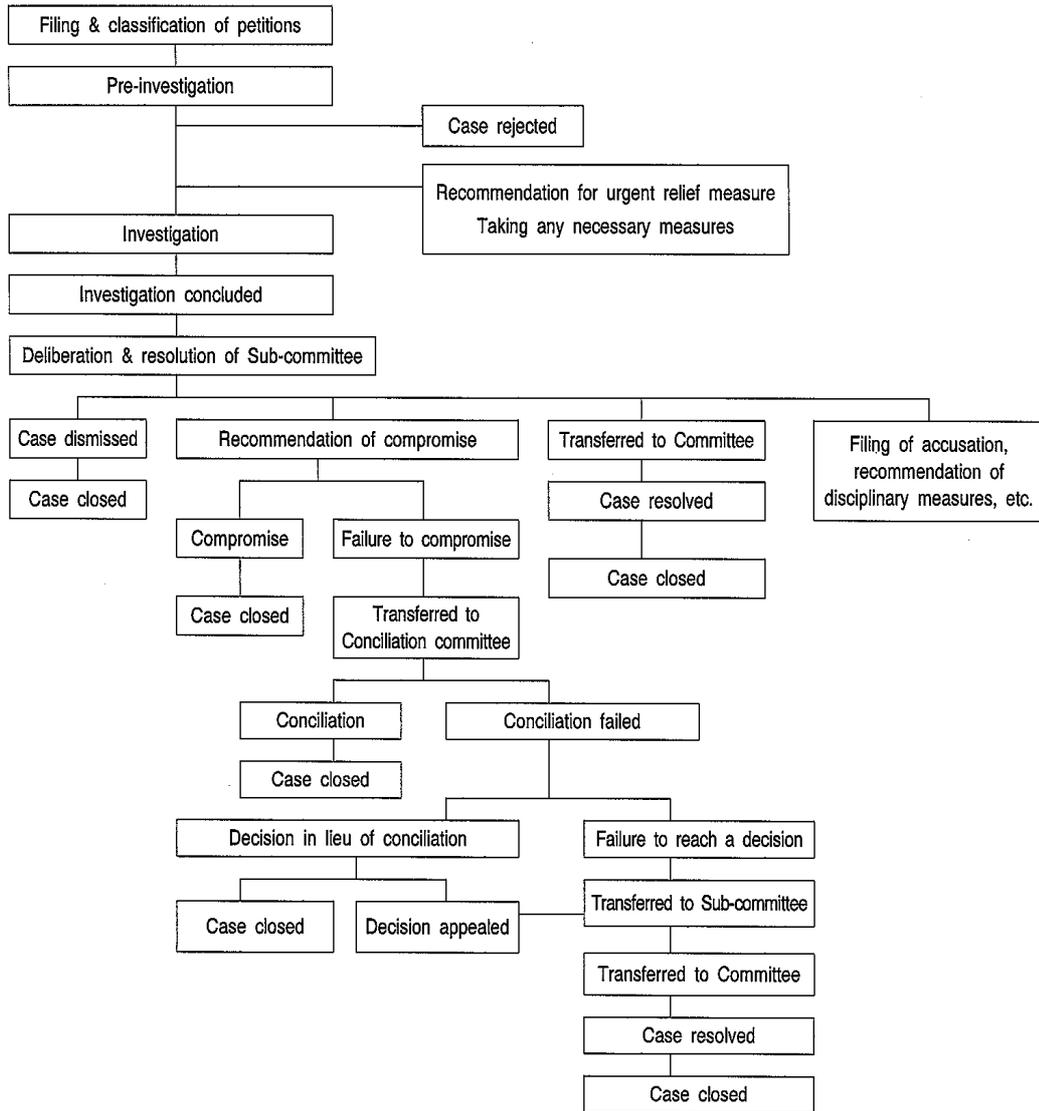
22. Article 201-2 of the Penal Procedure Code, amended in December 1997, provides a system under which the detention of a suspect is subject to judicial review, upon request by the suspect or other persons concerned. The details are as follows:

(a) Upon request by the suspect or his/her defence counsel, legal representative, spouse, lineal relative, brother or sister, head of household or family, co-habitant, or employer, a judge of the district court who receives a request for a warrant of detention may examine the suspect who has been arrested in order to confirm the reason for detention. In this case, any person other than the suspect may request such examination, even against the suspect's explicit intention (article 201-2, paragraph 1, of the Code);

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\* Available from the secretariat of the Committee.

### Complaint Handling Process



(b) A public prosecutor or a police officer shall inform the suspect that (s)he may make a request for the examination referred to in paragraph 1, and state in a record of examination whether (s)he will make a request for an examination by a judge. Under circumstances where the contents cannot be stated in the record, written confirmation drawn up by the suspect or other documents on which the suspect's opinions have been expressed may take the place of the record (article 201-2, paragraph 2, of the Code).

23. Despite this amendment in 1997, criticisms of the current system of examination before detention of a suspect have been made because a judge hears cases only when requested. In relation to this issue, there was even a court decision that judges have no duty to hear the cases (Supreme Court judgement 99 DO 2029). Taking such criticism into consideration, the Ministry of Justice is currently working on amending the Penal Procedure Code to have all suspects examined by a judge before detention when a warrant of detention is requested. For reference by the Committee, an average of 77.9 per cent of detainees have been examined by judges prior to detention during the six years after the initial report was submitted.

**Table 1**

**Examinations conducted before detention: 1997-2002**

Year	1997	1998	1999	2000	2001	2002
Arrest warrants requested	143 413	161 561	128 152	121 580	120 614	114 491
Examinations conducted before arrest	115 062	115 461	92 382	92 670	101 374	95 705
Rate of examination before arrest	80.23%	71.46%	72.08%	76.2%	84.0%	83.6%

24. In some cases where a suspect's request for judicial review upon detention was denied or ignored, the court determined the detention to be illegal. The Jeonju District Court declared in October 1998 that it is illegal to make an arrest without notifying the suspect's family of the right to request a review before his arrest.

25. The right of suspects was further confirmed when the Seoul District Court, in its decision rendered on 22 November 2000, nullified the detention of a suspect on the grounds that the police had forced the suspect to give up the right to request judicial review upon detention, and did not inform his family of the right to launch a review. The judge stated that the detention was illegal because the suspect's right to protect himself was infringed upon or unfairly limited.

26. A public officer shall not be exempt from penal responsibility even in the case of executing an illegal order from a superior officer. This has been firmly established by Court rulings (Supreme Court judgement 87 DO 2358 and Seoul High Court judgement 96 DO 3376).

### **Article 3**

27. The information supplied in the initial report of the Republic of Korea still applies in full with reference to article 3 of the Convention.

### **Article 4**

28. The Republic of Korea does not have a specific definition of torture in its Criminal Code as is defined in article 1 of the Convention. However, as explained in its initial report, the Republic of Korea is of the view that provisions contained in the Criminal Code and relevant special acts of the Republic of Korea are sufficient to punish those who commit torture as defined in article 1 of the Convention, thus fulfilling the requirements of article 4, paragraphs 1 and 2, of the Convention.

### **Conviction for acts of cruelty including torture**

29. From 1996 to 1999, some 30 police officers were convicted of committing cruel acts, including torture, during interrogations of criminal suspects. On 7 August 1999, for example, two police officers in a provincial police station were prosecuted on charges of torture and other cruel acts committed during the interrogation of a theft suspect in custody. They were sentenced to eight months and one year of imprisonment respectively, and each was placed on two years' probation.

### **The case of Lee Geun-ahn**

30. On 10 February 2000, the Suwon District Court sentenced Mr. Lee Geun-ahn, a former police detective indicted on charges of committing illegal confinement and cruel acts during the interrogation of a suspect in custody for alleged violations of the National Security Law, to seven years of imprisonment. In a hearing of appeal held a month later, the Seoul High Court sentenced five other police officers, indicted as accomplices of Mr. Lee Geun-ahn, to one year of imprisonment each.

### **A murder suspect's death**

31. On 26 October 2002, a murder suspect died in a prosecutor's office after being interrogated over a gangster-related murder case. The family members of the deceased claimed that he might have been tortured to death by investigators. Faced with this suspicion, the Supreme Public Prosecutor's Office set up an internal investigation to probe the case and discovered that the suspect's death was due to torture and cruel treatment by the investigators.

32. In addition, it was claimed that three suspects who were taken into custody as accomplices in the same murder case had also been tortured with water during interrogation. The immediate and thorough inspection of the prosecutor's office revealed the fact that they had been tortured with water. Accordingly, a prosecutor and several investigators involved in the incident were arrested and accused of torture and cruel treatment. The trials of those persons are currently under way.

33. However, the above-cited case was an isolated one. As an indication of his resolve to prevent the recurrence of similar torture and cruel treatment, the President himself made a public apology. The Prosecutor-General and the Minister of Justice resigned with dishonour, taking responsibility for the incident. In addition, the Government took this unfortunate case as an opportunity to review investigation procedures and strengthen protection of the human rights of suspects. In line with these efforts, the Ministry of Justice announced the Directive for Human Rights Protection during Investigation Procedures, details of which are explained in paragraph 51 of this report.

### **Articles 5, 6, and 7**

34. The information supplied in the initial report of the Republic of Korea still applies in full with reference to articles 5, 6 and 7 of the Convention.

### **Article 8**

35. The Extradition Act of the Republic of Korea provides that extradition may be requested only in cases in which crimes correspond to capital penalty or imprisonment for more than one year, under the laws of the Republic of Korea and those of the requesting countries as well. As explained in the initial report, this condition for extradition is consistent with article 8 of the Convention, which states that offences related to acts of torture should be included as extraditable in any extradition treaty existing between States, since the relevant laws of the Republic of Korea stipulate a minimum of one year of penal servitude for acts of torture or attempted acts of torture, as well as for all types of cruel, inhumane or degrading treatment or punishment.

### **Extradition treaties**

36. As of 31 December 2002, the Republic of Korea has concluded extradition treaties with a total of 16 countries. Since the submission of the initial report in 1996, the Republic of Korea has concluded extradition treaties with Paraguay (July 1996), Chile (October 1997), Mexico (November 1996), the United States (June 1998), Thailand (April 1999), Mongolia (May 1999), the People's Republic of China (October 2000), Indonesia (November 2000), New Zealand (May 2001) and Japan (April 2002) respectively. A table below shows the number of criminals extradited to and from the Republic of Korea.

**Table 2**

### **Extradition of criminals**

Year	To the Republic of Korea	To foreign countries
1998	0	1
1999	1	0
2000	3	1
2001	2	1
2002	6	1
Total	12	4

### Article 9

37. Based on the treaties of mutual assistance in judicial matters, the domestic laws of the Republic of Korea comply with article 9 of the Convention by providing other countries with the best available support, including offering any evidence accumulated during Korean investigations of crimes of torture or other crimes. With regard to the Act on International Judicial Cooperation on Criminal Cases, related details are as stated in the initial report.

38. Since the submission of its initial report, the Republic of Korea has concluded mutual judicial assistance treaties on criminal matters with China, Hong Kong, Russia, Mongolia, New Zealand, Indonesia and Brazil. A table below shows the number of mutual cooperation requests made to and by the Republic of Korea.

**Table 3**  
**Mutual cooperation requests**

Year	To the Republic of Korea	To foreign countries
1996	19	21
1997	8	29
1998	20	19
1999	42	19
2000	26	17
2001	27	19
2002	46	26
Total	188	150

### Article 10

#### Human rights education

39. The Republic of Korea has duly noted the paramount importance of human rights education regarding the criminality of torture and other cruel, inhuman or degrading acts for those engaged in all stages of police investigation and judicial proceedings. Based on this recognition, the Republic of Korea has taken various measures to incorporate education and training on the criminality of such acts as an essential component of the training of its police and judiciary officers.

40. After the accession of the Republic of Korea to the Convention, the Ministry of Justice published a collection of materials regarding the International Covenants on Human Rights. In addition, the Ministry of Justice distributed nationwide approximately 40,000-90,000 copies of *Law and Living*, containing the Convention provisions, each year from 1996 to 2000.

41. The Legal Research and Training Institute, an organization which is responsible for the training and education of prosecutors, prosecutorial investigators and officials of the correctional institutions and immigration offices, provides classes on human rights, such as "Human Rights

and Public Order” and “Women’s Human Rights”, which stress the criminality of cruel acts, as well as the need to respect human rights during the investigative process. Those classes are included in the curricula of 30 out of 97 courses of the Legal Research and Training Institute.

42. The Legal Aid Corporation explains to Korean citizens the contents of the International Covenants on Human Rights and of the Convention through lectures and symposiums that stress the importance of the observance of law. Between 1995 and 1999, approximately 1,750 lectures and symposiums were held annually across the country.

43. The Judicial Research and Training Institute, established by the Supreme Court to further the education of those who have passed the Korean Bar Examination before they enter the legal profession, issued a booklet regarding the international law of human rights. The booklet explains the content of major international human rights conventions, including the Convention.

44. The National Police Agency educates its officers on issues concerning arrest, detention and treatment of suspects and the observance of due process for human rights protection. Various programmes are provided through different educational institutions of the National Police Agency. For example, the National Central Police Academy requires newly recruited police officers to attend a “Fundamental Principles of the Constitution” course. The Investigation and Public Security Training Institute integrates an “Investigation and Human Rights” course into its eight training programmes. Further, the Korea National Police University has, as part of its curriculum, human rights classes such as “Democracy and Values of Human Rights” and “Police and Basic Human Rights”.

45. Education to enhance the human rights sensibilities of investigative officers is provided by each prosecutor’s office across the country. The education covers issues related to penal procedures and prevention of torture. For three years, from 1996 to 1999, 25,534 police officers nationwide were educated during lecture sessions.

46. The Intelligence Training Institute, an educational institution under the National Intelligence Service (formerly the Agency for National Security Planning), provides educational lectures on international human rights conventions and principles and procedures of related domestic laws, including the right to counsel, the right to be examined by judges when a warrant of detention is issued, notification of detention to the suspect’s family, and the illegality of using evidence obtained through torture as proof of guilt.

47. On 19 June 1997, the Ministry of National Defence issued a special directive to devise an educational programme on the laws of war. Also, the Bureau of Legal Affairs of Army Headquarters has held seminars for military prosecutors five times from 1998 to 1999, endeavouring to enhance military prosecutors’ level of understanding vis-à-vis international conventions related to war. Among these, the “Human Rights and Law of War” seminar was held in 1998, on the occasion of the fiftieth anniversary of the establishment of the Korean military, where military prosecutors discussed issues concerning the protection of human rights during wartime and observance of international humanitarian laws such as the Geneva Convention relative to the Treatment of Prisoners of War.

48. Education and promotion of public awareness are duties that the NHRC shall perform as provided in article 19, paragraph 5, of the National Human Rights Commission Act. In December 2002, the NHRC published a series of human rights education materials for public officials entitled “A Guide to Human Rights”, which is comprised of “A Guide to Human Rights: Correctional Institutions”, “A Guide to Human Rights: the Police” and “A Guide to Human Rights: the Prosecutors’ Office”. This will further contribute to the prevention of human rights abuses and nurture a human rights-friendly environment. In addition, the NHRC educated 10,878 law enforcement officers, including policemen and prison officers from public prosecutors’ offices, in 97 educational lectures up to August 2003. The NHRC also carried out a workshop for human rights instructors that consisted of 119 human rights experts from legal, academic, and human rights arenas.

49. On 25 November 2002, the NHRC hosted a forum, aimed at seeking ways to institutionally prevent torture and other cruel treatment during the process of interrogation. The forum engaged in extensive discussions covering five areas: (a) problems with investigations conducted by the police; (b) problems with investigations conducted by public prosecutors’ offices; (c) problems in the examination of the legality of arrest; (d) problems related with the system of defence counsel selected ex officio in the interrogation of a suspect; and (e) the issue of the validity of confessions as evidence in trial. This forum gave useful input to governmental efforts to revise the Penal Procedure Code in favour of human rights protection and served as a driving force in raising Koreans’ awareness of human rights.

### **Rules and instructions**

50. In December 1998, the Ministry of Justice promulgated the Rule Concerning the Ethics of Public Prosecutors. Article 6, entitled “Guarantee of Human Rights and Observance of Due Process”, provides that public prosecutors shall protect the fundamental rights of suspects, the accused or other concerned parties, and shall observe all relevant laws and regulations, stressing the duty of a public prosecutor to safeguard human rights at all times.

51. On 27 December 2002, the Ministry of Justice also announced the Directive for Human Rights Protection during Investigation Procedures to establish due process and ensure the human rights of suspects during investigation. The main provisions of the Directive, in force as of 1 January 2003, are as follows:

- (a) The prosecutor shall fully respect the rights of all concerned parties, including suspects and complainants (art. 3);
- (b) The prosecutor must allow a suspect’s lawyer to interview the suspect and to have limited access to the interrogation process (art. 4);
- (c) All officials engaged in the interrogation must respect the suspect and should not employ any brutality, including torture. In addition, the prosecutor shall not take advantage of coerced confessions as evidence (art. 5, paras. 1 and 2);
- (d) The prosecutor should take the necessary measures, including interviewing the suspect, during the examination of the warrant of arrest filed by the police, to screen for human rights violations or involuntary statements (art. 11, para. 4);

(e) The prosecutor must collect evidence on the case as thoroughly as possible before interrogating the suspect. The prosecutor must not take excessive measures to obtain a confession from the suspect. Moreover, the prosecutor shall consider, if the statement seems unreasonable, the reliability of the statement by examining the investigation procedure (art. 15, paras. 1 and 2);

(f) An official human rights protector is assigned to every prosecutor's office with the mandate of guaranteeing due process and protecting the human rights of the defendant in the investigation procedure. The official human rights protector carries out measures related to human rights protection, including surveys of present conditions, institutional reforms, further education regarding human rights, permission for after-midnight interrogations, and the correction of any violations of the Directive (arts. 33 and 34);

(g) The prosecutor is required to finish the interrogation of a suspect before midnight. The prosecutor may, however, continue the interrogation after midnight only with permission from the official human rights protector in such exceptional cases as the suspect or his/her lawyer having agreed to the interrogation, the likelihood that the arraignment may be extinguished by prescription shortly, and/or the need for a prompt interrogation to decide whether the suspect should be arrested while the suspect is in custody (art. 17).

52. On 13 January 1999, the Defence Security Command, a military investigation agency, issued guidelines for counter-intelligence and investigation with a view to safeguarding the human rights of suspects. The guidelines provide that:

(a) The suspect shall be notified of the right to counsel and the right to be silent when arrested;

(b) The principle of voluntary inspection shall be complied with; and

(c) The suspect shall not be arrested or detained without proper warrant.

53. On 31 December 1998, the Regulation for Military Personnel Related to Their Duties was amended to include the duty to observe international humanitarian laws. It provides that military personnel must refrain from acts of cruelty such as torture in times of war, and that commanders must educate their subordinates on international humanitarian laws.

## **Article 11**

### **The Ministry of Justice**

54. On 8 September 1998, the Ministry of Justice issued the Directive on Eliminating Human Rights Abuses in Correctional Facilities. The Directive stipulates that:

(a) Excessive inspection of inmates during the search process is prohibited;

(b) Disciplinary tools may be used for the protection of the inmates;

(c) Use of any kind of restraining tools to punish the inmates is prohibited; and

(d) Use or elimination of restraining tools occurring during the absence of the chief shall be reported upon his/her return.

### **The amendment to the Criminal Administration Act**

55. When there are grounds for suspicion that an inmate may attempt escape, violence, sedition, suicide or other acts that may cause harm to the safety or order of the prison, the use of restraining tools is allowed according to article 14 of the Criminal Administration Act. The use of these tools is highly restricted because physical restraint of the suspect is likely to result in the violation of his/her human rights. With the amendment of the Criminal Administration Act in 1999, the use of restraining tools as a punishment was prohibited, and the conditions of and process for using such tools were determined by presidential decrees. The shape and size of the tools were to be further restricted by the Minister of Justice.

### **Inspection of correctional facilities**

56. As the Committee was informed in the previous report, current laws of the Republic of Korea order public and military prosecutors to conduct routine inspections of places of detention and confinement in police stations to prevent the infringement of human rights by investigative agencies with such acts as physical detention and torture. In July 1997, the Supreme Public Prosecutor's Office ordered a directive reiterating the need for regular inspection of such places.

57. Judges and public prosecutors inspect prisons, juvenile reformatories and other places of detention to ensure that the human rights of inmates are guaranteed. Prison inspections were conducted in 17 prisons in 1997, 18 prisons in 1998, 18 prisons in 1999, 19 prisons in 2000, and 24 prisons in 2001. The NHRC also has as part of its mandate authority to visit detention or protective facilities to conduct independent investigations based on article 24 of the National Human Rights Commission Act. The NHRC performed a site survey in 2002 and plans to continue to do so.

### **Article 12**

58. All relevant laws of the Republic of Korea guarantee an immediate and unbiased investigation by public prosecutors or judicial police officers of cases where there are reasonable grounds to believe that acts of torture have been committed, as explained in the initial report of the Republic of Korea (paras. 181-186).

### **The Presidential Truth Commission on Suspicious Deaths**

59. The mandate of the Presidential Truth Commission on Suspicious Deaths (hereinafter referred to as "the Truth Commission") was based on the Special Act to Find the Truth on Suspicious Deaths, which was enacted on 15 January 2000 and came into effect on 16 May 2000. The Special Act was put into effect with the purpose of uncovering the truth about suspicious deaths which occurred during the democratization movement against past authoritarian regimes.

60. Throughout the recent history of the Republic of Korea, past military Governments often resorted to force as a means of holding onto power, and advocates for democracy and human rights were subjected to torture and other cruel, inhuman or degrading treatment or punishment. Suspicious deaths occurred during the democratization movement against past authoritarian regimes.

61. Mindful of this shameful past, and aiming to establish a systemic mechanism to prevent a reoccurrence by uncovering the truth about suspicious deaths, the Government established the Truth Commission. The formulation of the Special Act and the establishment of the Truth Commission were spurred by the 12-year long struggle of bereaved families to discover the truth about the deaths of their loved ones.

62. The Special Act confers upon the Truth Commission the responsibility to investigate suspicious deaths upon request from petitioners, to report the results and make recommendations to the President, and to refer the names of human rights violators to appropriate government institutions for prosecution. The major functions of the Truth Commission outlined in the Special Act and its Enforcement Decree are:

- (a) To select cases which merit investigation;
- (b) To investigate suspicious deaths;
- (c) To provide information and consultation related to suspicious deaths;
- (d) To receive and process applications related to suspicious deaths;
- (e) To take charge of matters related to restitution and compensation for victims whose deaths have been acknowledged by the Truth Commission as having been due to their involvement in the democratization movement and having resulted from the abuse of power by the Government in its attempt to suppress the movement;
- (f) To take charge of matters related to compensation and necessary assistance to people who testify about a suspicious death or who provide evidence or documentation that leads to a truth;
- (g) To take charge of matters related to compilation and announcement of reports on suspicious deaths at the end of an investigation; and
- (h) To take charge of all other matters related to finding the truth about suspicious deaths.

63. The Truth Commission is endowed with the responsibility to report the results of its investigation on a suspicious death to the President within one month of its completion, and to announce the findings to the public. Reports on a suspicious death include relevant facts of the situation, damages done to the victim, causes of the death, a discussion of the role of the Government or individuals found to be responsible for the death, recommendations concerning systemic improvements necessary to handle similar cases and to prevent their recurrence, and other matters as the Truth Commission sees fit.

64. The Truth Commission undertook a very important task with profound historical significance for the promotion of democracy and human rights. It carried out a thorough and meticulous investigation to the fullest extent of its powers, respecting law and justice. The Government believes that finding the truth about wrongful deaths is meaningful not only in giving proper reparation to the victims and their families, but also in rebuilding the trust between the State and the people, so that they can wholeheartedly share in building a better future for succeeding generations.

65. The Truth Commission received a total of 80 petitions between 20 October 2000, when the Truth Commission was launched, and 2 January 2001. As a result of preliminary surveys, 78 cases were selected as cases that merited investigation, while 2 cases were declined. Adding 5 additional cases to its authority, including the Samchung Disciplinary Camp case and the Inhyuk Party case, the Truth Commission decided to probe 83 cases in total.

66. Based on investigations completed by 16 September 2002, when the Special Act required the Truth Commission to conclude its investigation, the Truth Commission recognized 19 cases in which suspicious deaths were caused by illegal activities committed by law enforcement authorities. By contrast, the Truth Commission decided that 33 cases were insufficiently supported by evidence and that 30 cases were impossible to investigate under given conditions, while 1 case was withdrawn by the complainant.

67. The reparation procedures have been under way in the 19 cases recognized as suspicious deaths that were proved to have resulted from the direct or indirect use of power by government authorities in violation of laws. In one case where the Truth Commission decided that there had been acts of violence by those police officers, the Truth Commission referred to the Supreme Public Prosecutor's Office to request prosecution of the police officers involved.

68. In its efforts to identify and redress cases of torture under past regimes, the Government has had considerable difficulty due to budgetary and other restraints. Nonetheless, the Government will continue to make efforts to elucidate wrongdoings of the past, since it believes that remnants of past authoritarian rule undeniably play a part in hindering transparency and accountability in bringing to light cases where torture was committed.

69. Although the human rights situations of the Republic of Korea has improved, suspicions of torture and other cruel acts have been intermittently raised. These suspicions are due to not only actual, though rare, occurrences of torture and other cruel acts, but also to the Korean people's newly raised awareness of human rights and of the now well-established procedures for remedy of human rights violations in the Republic of Korea.

#### **Suspicious deaths of inmates and human rights abuses**

70. From 1 January 1998 to 30 June 2000, a total of 748 cases of violence were filed in prisons and detention facilities. During the same period, a total of 21 inmates killed themselves in prisons and detention facilities. Among the 21 suicide cases, 5 occurred in 1998, 10 in 1999 and 6 in the first half of 2000.

71. In December 2001, the NHRC requested the Prosecutor-General to conduct an investigation into the death of an inmate in the Ulsan detention centre. Upon receipt of the request, the Prosecutor-General investigated promptly and impartially the allegations that prison officers treated cruelly a then-sick inmate and neglected him for a considerable amount of time, resulting in the inmate's death. The Ulsan District Prosecutor's Office decided to charge two prison officers with accidental homicide arising out of neglect of duty. However, the Office could not prove that any cruel treatment had actually occurred.

72. The Government has listened closely to allegations raised by bereaved families and some human rights groups that some of the suicide cases were related to torture and other cruel, inhuman or degrading treatment by prison officers or due to violence among inmates; hence, the Government has ensured that its competent authorities, including investigative organs, proceed with thorough, prompt and impartial investigations into those suspicious deaths.

### **Other cases**

73. In August 1999, theft suspects levelled charges of cruelty against two police officers. The officers were prosecuted by the Gyeongju Regional Office of the Daegu District Public Prosecutor's Office shortly after the human rights abuses occurred. One of the officers was sentenced to imprisonment for eight months, and the other to one year of imprisonment and two years of probation.

74. The Changwon District Court sat in judgement on 20 November 2000 of a case in which a victim claimed State redress for the unlawful usage of disciplinary tools by the police. It ruled that the use of shackles by the police was unnecessary and that the Government should compensate the plaintiff for damages in the amount of 1 million won, equivalent to US\$ 783. The court found that chaining suspects who are not likely to escape or commit suicide is unjustified.

## **Article 13**

### **The amendment to the Military Criminal Administration Act**

75. During the period under review, the right of members of the military service to petition was reinforced. Although the Act on Military Criminal Administration has been through some minor changes since its enactment in 1962, the comprehensive incorporation of human rights developments into the Act was made in 1999.

76. According to article 4 of the Act as amended, all the persons who are held in detention centres, such as military prisons, qualify for the right to file a petition in protest of their treatment. Before the amendment, only convicted inmates could file a petition, so that an accused waiting for trial did not enjoy the right to petition. Furthermore, the amended article 4 ensures that the petition is not relayed to prison officers, and that the decision on that petition is recorded.

77. The right to counsel has also been strengthened by the amendment. Article 62 of the Act provides that unconvicted inmates shall enjoy their right to counsel, while prohibiting prison officers' intervention, including listening and recording conversations during meetings with legal counsels.

#### **Petitions, including complaints and accusations**

78. Statistical data regarding complaints and accusations of torture are inadequate to show exactly how many petitions have been filed against public officials, as there is no system designed to collect such statistical information. However, the data below are relevant and helpful in examining how the rights of individuals are realized through petitions in line with article 13 of the Convention.

79. Between 1998 and 2002, a total of 326 petitions were filed against public officials on charges of illegal arrest and confinement committed in relation to performance of their official duties. Among the accused, a total of 10 officials were found guilty and prosecuted accordingly.

**Table 4**

#### **Petitions against public officials on charges of illegal arrest and confinement**

Year	Prosecuted	Suspension of indictment	Free from Suspicion	Under investigation	Others	Total
1998	4	12	31	20	19	86
1999	0	0	31	0	26	57
2000	3	4	52	0	23	82
2001	3	1	32	5	30	71
2002	0	1	16	2	11	30
Total	10	18	162	27	109	326

80. During the same period, a total of 2,434 petitions were filed against public officials on charges of violence and other cruel acts committed during performance of their official duties. Among the accused, a total of 43 officials were found guilty and prosecuted accordingly.

**Table 5**

#### **Petitions against public officials on charges of violence and other cruel acts**

Year	Prosecuted	Suspension of indictment	Free from Suspicion	Under investigation	Others	Total
1998	20	31	137	179	92	459
1999	19	44	211	68	244	586
2000	2	25	274	73	247	621
2001	1	20	255	13	247	536
Jan. - June 2002	1	4	84	53	90	232
Total	43	124	961	386	920	2 434

81. Provided below for reference are data regarding petitions lodged against public officials, specifically, those officials employed in investigative organizations including the Supreme Public Prosecutor's Office, the National Intelligence Service, and the National Police Agency.

**Table 6**  
**Petitions against investigative organizations on charges of violence, confinement and other cruel acts**

Month/Year	Prosecuted	Suspension of indictment	Free from suspicion	Under investigation	Others	Total
Oct. 97 - Sept. 98	10	30	187	30	91	348
Sept. 98 - Dec. 99	6	15	75	25	24	145
Jan.* - June 2000	3	12	85	47	62	209
Total	19	57	347	102	177	702

\* Includes illegal arrests.

82. The Supreme Court addressed a case in which an inmate in the Masan Prison tried to submit a written accusation of degrading treatment by a prison officer, only to be turned down. He took action against the Government for the refusal after he was released in 1998. On 8 May 2001, the Supreme Court decided that the Government was responsible for a prison officer's illegal refusal to receive a written accusation from an inmate.

#### **Quasi-indictment procedure**

83. As explained in the initial report, the Penal Procedure Code provides quasi-indictment procedures that can be initiated at the request of legal counsel, apart from indictment procedures initiated by a public prosecutor. According to the quasi-indictment procedures, 246 appeals were requested with regard to violence and other cruel acts of public officials from 1999 to 2002.

84. The Seoul High Court ruled on a case regarding quasi-indictment procedures. A lawyer suspected of violating the Attorney-At-Law Act, was taken forcibly to the police station by a prosecuting investigator and confined illegally in a protection facility of the station. He made an appeal to the Seoul High Court, which recognized the admissibility of the appeal and ordered the institution of public action. In its ruling on the case in June 1999, the Court, recognizing the illegality of the confinement, sentenced the investigator to four months of imprisonment and one year of suspension from duty.

### **Article 14**

#### **The Act on the Restoration of the Honour and Compensation of Persons Engaged in the Democratization Movement**

85. In January 2000, the Act on the Restoration of the Honour and Compensation of Persons Engaged in the Democratization Movement was adopted and became effective in May 2000.

According to the Act, persons who had devoted themselves to democratization against authoritarian regimes of the past and been tortured or victimized due to activities related to the cause can receive compensation from the Government. Financial compensation has been given to victims as well as victims' heirs. As of the end of 2002, out of 10,807 petitions for the restoration of honour submitted, 4,261 cases had been decided and 321 cases were found to merit compensation. Screening of petitions continues.

### **The Penal Compensation Act**

86. As explained in the initial report, in a case in which a criminal suspect or an accused person who has been placed under detention is not indicted or is acquitted by a court, (s)he shall be entitled to claim compensation from the Government. Under the Penal Compensation Act, in 1996, a total of 1,215,570,000 won was paid as compensation to 226 persons; in 1997, 955,050,000 won were paid to 165 persons; in 1998, 1,477,820,000 won to 234 persons; and in 1999, 3,019,460,000 won to 342 persons. (Note: In 1999 one United States dollar was on average equal to 1,215.03 won).

### **The National Reparation Act**

87. As explained in the initial report, in a case in which a person has sustained damages due to an unlawful act committed by a public official performing official duties, (s)he may claim compensation from the Government. A table below shows the number of cases and amount of compensation given to victims under the National Reparation Act.

**Table 7**

#### **Compensation from the Government under the National Reparation Act**

Year	Number of cases	Amount (won)
1996	574	7 338 290 000
1997	504	12 071 590 000
1998	613	9 639 330 000
1999	576	854 560 000
2000	484	6 505 559 000
2001	534	6 068 974 000
2002	484	7 460 865 000
		(equivalent to US\$ 5 841 716)

### **The Act Concerning Aid to Victims of Crime**

88. The Act Concerning Aid to Victims of Crime provides that a victim of crime may receive adequate remedies from the State, and claim compensation. In cases where the victim is deceased, his/her family may claim the compensation. A table below shows the number of cases and amount of compensation given to victims under the Act.

**Table 8**  
**Compensation from the Government under the**  
**Act Concerning Aid to Victims of Crime**

Year	Number of cases	Amount (won)
1996	43	376 000 000
1997	50	472 000 000
1998	85	772 000 000
1999	102	920 500 000
2000	83	765 500 000
2001	67	620 100 000
2002	69	658 000 000
		(equivalent to US\$ 515 202)

89. The Seoul Administrative Court made a ruling that soldiers who commit suicide as a result of violence and cruel acts committed by senior officials qualify for compensation.

#### **Article 15**

##### **The right to refuse to answer questions**

90. The courts have made several decisions guaranteeing the so-called Miranda rule applicable to investigations by law enforcement authorities. On 8 January 2000, the Supreme Court declared that a police officer cannot arrest a suspect even in the most incriminating circumstances if the officer does not first inform the suspect of the reason for the arrest, of the right to remain silent and of the right to consult a lawyer. In addition, the officer must give the suspect the opportunity to defend his/her actions before the arrest.

##### **Nullification of unlawfully acquired evidence**

91. Courts at all levels, including the Supreme Court, have firmly established the principle of nullification of unlawfully acquired evidence.

92. Evidence collected outside the due process of law, including any case in which unlawful acts such as illegal confinement occurred, shall not be admitted (Supreme Court judgement 2002 DO 5701). Also, when there are reasonable grounds to believe that the accused made a false confession against his/her will owing to the use of torture, or that the accused made a false statement under psychological pressure by the investigating authority, the confession and statement shall not be regarded as evidence of guilt (Supreme Court judgement 98 DO 3584 and Supreme Court judgement 97 DO 3234).

#### **Article 16**

##### **Supreme Public Prosecutor's Office**

93. On 10 July 1996, the Prosecutor-General issued a directive on eradicating acts of cruelty, warning against any kind of human rights infringements including acts of violence and use of profanity against suspects or concerned parties.

94. On 28 October 1996, guidelines to deal with petitions regarding acts of cruelty were issued, which stipulate that all petitions regarding acts of cruelty committed by public officials are to be investigated by agencies higher than those agencies involved, with the aim of ensuring impartiality.

### **The Ministry of National Defence**

95. On September 1998, the Ministry of National Defence promulgated the Rules concerning Acts of Cruelty and Violence, placing a great emphasis on the implementation of educational programmes in eliminating causal factors of violent and cruel acts and in eradicating all acts of violence and cruel treatment.

### **Frisking detainees**

96. In March 2000, three female detainees, who had been frisked while being arrested for violations of the Act on the Election of Public Officials and the Prevention of Election Malpractice, charged three police officers with abuse of authority and cruel acts. On 11 November 2000, the Seoul District Court stated in its decision (2000 GAHAB 35295) that although a body search can be conducted upon a newly arrested suspect, it is only exceptionally permitted on a person who is already imprisoned, and that the strip search conducted on these plaintiffs was illegal because it went far beyond what could be justified in light of its purpose. In July 2002, the Constitutional Court decided that excessive body searches, including strip searches, are unconstitutional (Hun Ma 327). Accordingly, the National Police Agency revised its Rules on Detention and Transportation of Suspects to prevent the recurrence of acts of excessive body searches.

## **II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE**

97. At the conclusion of its consideration of the initial report of the Republic of Korea, the Committee recommended that the allegations of ill-treatment that had been brought to the Committee's attention be duly investigated and that the results of such investigations be transmitted to the Committee.

98. To this end, the Government would like to inform the Committee that the Government has sent to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment its letters addressing several concerns raised by the Special Rapporteur during the review period. These included the cases of Park Chung-ryol, Park Chang-hee and the Hanchongryon (a nationwide university student organization) demonstration. The letters of the Government are summarized in the report of the Special Rapporteur (E/CN.4/1998/38/Add.1).

## **III. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS**

99. At the conclusion of its consideration of the Republic of Korea's initial report, the Committee expressed several concerns and recommendations.

### **The specific definition of the crime of torture**

100. Expressing its concerns in its concluding observations of 13 November 1996 that the Republic of Korea had not incorporated a specific definition of the crime of torture in its penal legislation in terms consistent with the definition contained in article 1 of the Convention, the Committee recommended that the Republic of Korea enact a law defining the crime of torture in terms consistent with the said article. While fully acknowledging and understanding the concerns of the Committee, the Republic of Korea still believes that provisions contained in the current Criminal Code and other relevant acts are sufficient to punish those who commit torture as defined in article 1 of the Convention.

101. As is described in paragraphs 105-110 of the initial report, the Republic of Korea considers the concept of punishable acts under the relevant laws to be much broader than the concept of torture as defined in the Convention and even covers attempted torture and other cruel, inhuman or degrading treatment. Under criminal provisions of the Republic of Korea, all acts of violence and cruelty committed by a public official performing his/her duties are subject to punishment. Several cases, in which public officials have been convicted of acts of torture and cruelty during interrogation of criminal suspects, are described in section I of this report. It is the opinion of the Government that there is no need to amend the current laws to incorporate the definition of torture.

### **Allegations of torture procedure during interrogations**

102. The Committee expressed concerns about allegations of torture committed during interrogations in an attempt to extract confessions from suspects. The Government is well aware that there have been allegations raised by some human rights groups that sleep deprivation is forced on some suspects. Responding to such concerns, the Government has taken various measures to prevent torture and other cruel acts as described earlier in this report.

### **Prompt and impartial investigation**

103. The Committee was concerned about allegations of the Republic of Korea's continued failure to investigate and prosecute promptly and impartially those responsible for acts of torture and ill-treatment. Measures taken by the Government and cases of prompt and impartial investigation and prosecution have been explained in relevant parts of this report.

104. The Committee also expressed its view that it is unacceptable that only formal complaints made by the victims of torture are investigated. However, it should be noted that a complaint may be filed by a person aggrieved by human rights violations, or by a third party who knows of such violations on behalf of the affected person, and that a complaint can be easily made by calling, mailing, visiting, faxing or e-mailing the NHRC. It should be also noted that if a detainee in a detention centre or an inmate in a correctional facility wants to file a complaint, (s)he can use a complaint box installed by the NHRC in every facility or request the NHRC staff to meet with him/her so that (s)he can file a complaint during a face-to-face interview with a staff member of the NHRC. If the NHRC determines at the conclusion of its investigation of a petition that a criminal act has been committed, it may file an accusation to the Prosecutor-General.

### **The National Security Law**

105. The Committee emphasized that the Republic of Korea must ensure that the provisions of the National Security Law are not implemented arbitrarily. The Committee also pointed out that the vagueness of its provisions gave rise to a great danger of arbitrariness.

106. In this regard, the public prosecutors' offices have assumed cautious attitudes in applying the relevant provisions of the National Security Law to each case so as not to infringe on basic human rights. Such measures include a special directive issued in March 1998 to police stations instructing them to apply the National Security Law with more caution to prevent violations of human rights by its misuse. As a result of such efforts, the total number of detentions under the National Security Law from 1998 to 2002 dropped to 1,156, from 1,841 during the period from 1993 to 1997. The number of detentions for violation of the National Security Law is as follows:

**Table 9**

#### **Number of detentions for violation of the National Security Law**

Year	1997	1998	1999	2000	2001	Jan-Nov. 2002
Number of detentions	641	465	312	130	126	123

107. On 27 November 2000, a legislative bill calling for annulment of the National Security Law was submitted to the National Assembly, and on 27 April 2001, a legislative bill proposing amendment of the National Security Law was submitted to the National Assembly. While those bills are pending, the Government is seriously studying ways to make the National Security Law accommodate the changing views of Korean society.

108. The National Intelligence Service has undergone a major transformation. In order to incorporate transparency and accountability into the operations of the Service, much of its investigative jurisdiction has been delegated to the National Police Agency. The Service has even entrusted to the National Police Agency many investigations on violations of the National Security Law which belong to the Service's mandate.

109. The Service has also placed a great emphasis on safeguarding human rights and observing the due process of law during investigations by implementing policies in accordance with the Statute for Investigative Officers Related to Their Duties, which prohibits the corruption and abuse of official authority and compels the observance of due process of law during investigations.

### **Redress or compensation procedures**

110. The Committee expressed its concern that the existing procedures for obtaining redress or compensation were not effective. Since the submission of its initial report, the Republic of Korea has made efforts to secure effective procedures for obtaining redress or compensation.

111. In January 2000, the Republic of Korea promulgated the Act on the Restoration of the Honour and Compensation of Persons Engaged in the Democratization Movement, providing that the Government of the Republic of Korea shall pay due compensation to victims who have

suffered from torture by public officials under past authoritarian regimes or to the families of such persons who are deceased or missing. In accordance with the Act, victims of the democratization movement and victims' families have received compensation, medical assistance, and financial aid.

### **Review on the national laws**

112. The Committee recommended that the national laws be further reviewed in light of the Convention and other standards for the protection of human rights in general. In December 2002, the Ministry of Justice concluded a draft amendment to the Penal Procedure Code. It stipulates the guarantee of a lawyer's presence during interrogation of his/her client, a reform of procedures on emergency arrests, an expansion of the public defender system, and reform of the quasi-indictment procedures. The Ministry has been consulting with the NHRC and other human rights groups over key issues contained in the articles of the draft amendment, and the Government expects that the Code will be amended in due course with a view to further promoting human rights, including the prevention of torture and other acts of cruelty.

### **Education of relevant authorities regarding the prohibition against torture**

113. As the Committee recommended in its concluding observations, the Republic of Korea has noted the importance of educating those engaged in all stages of police investigation and judicial proceedings regarding the criminality of torture and other cruel, inhuman or degrading acts. Based on this recognition, the Republic of Korea has taken various measures to incorporate human rights education as an essential component in training its police and judiciary officers. Details are explained in section I of this report.

### **Inspection of detention centres and places of imprisonment**

114. The Committee recommended that an independent governmental body take over the inspection of detention centres and places of imprisonment.

115. In accordance with its mandate, the NHRC performs independent monitoring activities periodically on detention and correctional facilities. Other governmental organs are under obligation by law to cooperate fully in facilitating requests made by the NHRC. In addition, the Ministry of Justice published the Guide to Petition Process for the National Human Rights Commission, which describes the process of filing a petition with the NHRC on the treatment of prisoners, and distributed it in correctional facilities. Also, the NHRC, upon receiving complaints of human rights violations, can initiate an investigation by requesting a submission of statements from parties concerned and inspecting facilities in question.

### **Detention periods**

116. With regard to detention periods, the Committee asserted that a 30- or 50-day maximum period of detention in police premises for interrogation purposes before a suspect is charged was too long and should be shortened. The Special Rapporteur raised a similar issue in his letter dated 11 June 1997, alleging that, according to information received, a suspect may be detained for up to 30 days prior to indictment or for up to 50 days in some cases of violating the National Security Law.

117. In response to these allegations, the Government of the Republic of Korea already informed the Committee in its letter of 15 September 1997 that the maximum detention period at either a police station or a public prosecutor's office is 10 days each. The detention period at a public prosecutor's office can be extended for an additional 10 days only with the approval of a judge. For some violations of the National Security Law requiring specialized investigations and information-gathering procedures, the maximum detention period may be extended to 50 days, but only with judicial permission.

### **Right to counsel**

118. The Committee recommended in its concluding observations that counsel be permitted to be present during interrogations. It should be noted that the Constitution and Penal Procedure Code of the Republic of Korea provide that the defence counsel or family members of a suspect or an accused person under arrest or detention be notified without delay regarding the charges and the evidence supporting those charges, and the time and the place of the arrest or detention, as explained in previous parts of this report.

119. Furthermore, the Supreme Public Prosecutor's Office has enforced guidelines concerning the Directive for Human Rights Protection during Investigation Procedures since January 2003. The guidelines stipulate the right of a suspect to have his/her lawyer present during interrogation. In the course of 2003, lawyers were allowed to be present at the interrogations of a total of 112 cases at 32 district offices under the Supreme Public Prosecutor's Office. To further incorporate the right to counsel into law, the Ministry of Justice is drafting an amendment to the Penal Procedure Code.

120. In addition, as the Committee was informed in the previous report, the Government of the Republic of Korea has made efforts to ensure that criminal offenders receive legal assistance through programmes such as the Legal Aid Programme of the Korea Legal Aid Corporation and the Public Legal Officers System.

### **Reservations concerning articles 21 and 22 of the Convention**

121. In its recommendations, the Committee also expressed its hope that the Republic of Korea would review its reservations and make the declarations concerning articles 21 and 22 of the Convention, which are related to the State communications and individual communications, to the Committee. In accordance with the Committee's recommendations, the relevant ministries and agencies of the Republic of Korea have been discussing the possibility of declaring that it recognizes the competence of the Committee as defined in articles 21 and 22 of the Convention. Consensus, however, has not yet been reached.

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