



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

Distr.: General
22 May 2006
English
Original: French

COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*
OF THE 714th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 May 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS
later: Mr. KOVALEV (Vice-Chairperson)
later: Mr. MAVROMMATIS (Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.714/Add.1.

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (*continued*)

Second periodic report of the Republic of Korea (CAT/C/53/Add.2;
CAT/C/KOR/Q/2) (*continued*)

1. *At the invitation of the Chairperson, the members of the delegation of the Republic of Korea took places at the Committee table.*

2. Mr. LEE Sun-wook (Republic of Korea) said that article 125 of the Criminal Code of the Republic of Korea was applied in cases of assault or cruel acts committed by prison guards. The decision of the Gwangju High Court, mentioned in the NGO report, which had found article 125 to be inapplicable, was an exception. Indeed, the Office of the Public Prosecutor had debated the validity of that decision. However, article 125 had been applied in the case of the sexual aggression of a female inmate by a prison guard in March 2006. If the Supreme Court were to hand down in the future a decision establishing that article 125 was not applicable to prison guards, the State party would consider amending the legislation to remove any possibility of escaping punishment.

3. Mr. KIM Joon-gyu (Republic of Korea), replying to questions on the definition of torture, said that the absence of an explicit definition of torture in the Criminal Code in no way prevented acts of torture and cruel, inhuman or degrading treatment, as defined the Convention against Torture, from being duly punished. In that sense, the Republic of Korea complied with its obligation under article 4 of the Convention. The issue nevertheless remained debatable in so far as it might be considered that the Republic of Korea fulfilled the necessary but not the sufficient conditions for the punishment of torture. Consequently, the amendment of the Criminal Code in order to incorporate into it a definition of torture based on article 1 of the Convention against Torture would be duly considered.

4. Mr. LEE Sun-wook (Republic of Korea), reverting to the case of the death of a murder suspect in 2002 on the premises of the Seoul District Public Prosecutor's Office, said that, of the nine persons charged, four had been given prison sentences, two had received a suspended sentence and three had been found not guilty. The decision to hand down a suspended sentence for two of the defendants had been based on the following criteria: the intention of the victim, the motive for the crime and the degree of involvement of the defendants. The family of the deceased person had received some 220 million won, or nearly 240,000 dollars, as compensation. The seven other persons who had been victims of acts of torture in the same case had instituted proceedings against the State the previous year, which were pending.

5. Mr. KIM Chul-soo (Republic of Korea), responding to the concerns voiced by several Committee members on the subject of the National Security Law, said that in most cases of breaches of that Law, the suspects did not contest the facts of which they were accused. In addition, they were guaranteed access to a lawyer by the Code of Criminal Procedure, which also stipulated that statements obtained through torture could not be used as evidence, and the Penal Compensation Act provided that any person unlawfully held in detention or tortured during detention had the right to request financial compensation. In addition, in September 2003, 63 prisoners serving long-term sentences for having violated the National Security Law had been transferred, on their request, to the Democratic People's Republic of

Korea under the supervision of the Ministry of Reunification. Not one of the persons listed by Amnesty International as long-term prisoners still remained in prison. As for the Security Surveillance Law, it covered mainly violations of the National Security Law. Its maintenance in force therefore depended very much on the ongoing review of the National Security Law with a view to its being amended or repealed. The Republic of Korea continued nevertheless to think that legal safeguards were needed against threats to national security. With regard to the members of the Hangchongry student group accused of breaking the National Security Law, clemency measures had been granted in 2003 and 2005. However, they were not applicable to leaders of the movement or to those of its members who were implicated in acts of violence.

6. Mr. KIM Joon-gyu (Republic of Korea), taking up the question of the revision of the National Security Law, in particular its article 7, reaffirmed that the National Assembly was currently considering the matter and that the abrogation of that Law was one of the possibilities being considered. The Committee's comments in that regard would be transmitted to the Government and to the National Assembly as contributions to the debate.

7. Mr. LEE Sun-wook (Republic of Korea), reverting to the case mentioned by Ms. Gaer in which investigators had forced a suspect to go naked, said that the two persons involved in that case, who had already been sentenced to prison for their role in the death of a suspect referred to earlier, had been sentenced to an additional five months' imprisonment. Forcing a suspect to go naked was an extremely rare practice in the Republic of Korea and there was no doubt that it would in future be severely punished.

8. Concerning the monitoring of detention centres, all public prosecutors in the country were supposed to carry out inspections in detention facilities under their responsibility at least once a month. The primary goal of such inspections was to ensure continued monitoring and prevent breaches of the applicable regulations, not to highlight specific cases of human rights violations. However, when such violations were noted, relevant information was recorded by the office of the competent district prosecutor.

9. Mr. SHIN Yong-hae (Republic of Korea) informed the Committee that, following the death of a female prisoner who had attempted suicide after being sexually assaulted by a prison guard, the Minister of Justice had ordered a thorough investigation, announced measures to prevent the recurrence of such events and presented a public apology. The culprit had been sentenced to prison and disciplinary measures had been taken against the six other persons implicated, who had included the director of the Seoul Regional Correction Headquarters and the director of the Seoul detention centre, who had been found guilty of concealing the facts.

10. The problem of sexual violence committed by prison guards was being closely monitored by the National Human Rights Commission and the Ministry of Justice. Since April 2006, a board to monitor sexual violence in correctional facilities had been put in place and controls had been stepped up. To make up for the shortage of women among supervisory personnel, the Ministry of Justice had launched an annual recruitment drive for female staff.

11. With regard to the use of measures of restraint, leather belts and facemasks had been replaced by protective devices of the type used by boxers, following a decision

by the Ministry of Justice. The maximum period of solitary confinement was currently one month. Punishment cells were used for that purpose; they were like regular individual cells and prisoners who were placed in them were allowed to write letters and had enough room to exercise. Following abuses in June 2002, civil society groups had campaigned, and in 2004 the Minister of Justice had changed the regulations governing the use of measures of restraint and the punishments applicable to detainees. Accordingly, when a restraining device was applied for more than a month, the official responsible for monitoring detainees was required to notify the regional directorate of correctional establishments and request a review of the justification for such a measure. Furthermore, the slackness of a number of inspections made by judges and prosecutors had led the Minister of Justice to set up several monitoring bodies composed of representatives of civil society.

12. Deaths among detainees were usually due to diseases from which they had already been suffering before being imprisoned. In order to limit deaths, every detainee was subjected on arrival to both a physical and a psychological examination and the results were recorded by the medical services. In cases of an abnormality or a serious disease, the detainee was immediately transferred to a hospital to receive suitable treatment. Since 2005, detainees underwent yearly examinations identical to those practised in industrial medicine.

13. As for prison suicides, the Ministry of Justice had commissioned a study to determine the causes of that phenomenon and find solutions. Although it was difficult to ascertain the reasons for a suicide, interviews with the family or fellow detainees of victims had revealed such causes as guilt, non-acceptance of a heavy sentence, alienation or mental disorders. No study had established any correlation between acts of violence committed in places of detention and the number of prison deaths. Any kind of violence or cruel act was severely punished. Additional measures would be taken to guard against any recurrence of such behaviour in the future.

14. Mr. LEE Sun-wook (Republic of Korea), taking up the question of emergency arrests, explained that, under the Code of Criminal Procedure, such arrests could be made only when the offence was serious and punishable by more than three years' imprisonment; when there were tangible reasons for believing the suspect to be guilty; when there was a risk that the suspect would destroy the evidence or take flight; or when there was not enough time for an arrest warrant to be issued by a judge. As abuses had been reported, the Public Prosecutor's Office had recently placed restrictions on that type of arrest. Emergency arrests had thus decreased from 14.1 per cent in 2003 to 6.8 per cent in 2005. The proposed amendments to the Code of Criminal Procedure currently under consideration by the National Assembly stipulated that an arrest warrant must be requested without unjustified delay once an arrest had been made. If the request for a warrant was not made promptly, the court had to be notified of the reasons within 30 days after the arrest. The right to legal counsel was guaranteed without restriction both in practice and under the legislative provisions in force. At the present time, the lawyer's attendance during the suspect's interrogation was provided for not by law but by guidelines established by the Prosecutor's Office, except when there was reason to fear that the lawyer would destroy or interfere with the evidence, jeopardize parallel investigations under way or place the life of victims or members of their family in danger. The incorporation in the Code of Criminal Procedure of a provision guaranteeing the presence of a

lawyer during interrogations was one of the proposals currently being considered by the National Assembly.

15. *Mr. Kovalev, Vice-Chairperson, took the Chair.*

16. Mr. KIM Young-yeun (Republic of Korea), replying to the question of Ms. Gaer concerning the expulsion of Mr. Samar Thapa, said that he had been sent back to Nepal on 1 April 2004 after exceeding by nine years his authorized stay in the Republic of Korea. At the time of his return, he had not claimed that he would be at risk of being tortured on his return to Nepal and no document had been communicated by NGOs proving that there was such a risk. To date, there was no ground for stating that he had been exposed to torture following his return to Nepal. As for the implementation of article 3 of the Convention, article 64 (3) of the Immigration Control Act stipulated that no refugee was to be returned to a country in which repatriation was prohibited except in cases where the Ministry of Justice considered that the person's presence in the territory of the Republic of Korea might be detrimental to the interests or security of the country. However, under that provision, no refugee had been expelled to a country where he was at risk of being subjected to torture. Under article 64 (1) of the Immigration Control Act, any person subject to an expulsion order must be repatriated to the country of his or her nationality. If that was not possible, the person could be sent to the country of his or her choosing. Article 60 of the Immigration Control Act provided that the person named in an expulsion order could lodge an appeal with the Ministry of Justice or apply to a court. Even when the petition was insufficiently substantiated, the Ministry could authorize the petitioner to remain in the Republic of Korea when so required by particular circumstances.

17. In February 2006, the Minister of Justice of the Republic of Korea had established a special nationality and refugee division and had amended the Immigration Control Act in order to improve the effectiveness of the refugee recognition mechanism. As a result, asylum-seekers now enjoyed a status that allowed them to work in the country; a commission on refugee recognition composed of five State representatives and five members of civil society had been set up to ensure the objectivity and fairness of the procedures; a refugee assistance centre had been established to guide refugees in their administrative formalities and the exercise of their rights and steps had been taken to guarantee them access to the same public services as the rest of the population. The number of asylum-seekers had considerably increased between 2003 and 2005, mainly because refugee status had been granted to a growing number of them and also because residence permits had been delivered on humanitarian grounds, thus encouraging applications. Foreigners in breach of the Immigration Control Act were not placed in a regular penitentiary institution but in a camp for foreigners. Currently, 688 foreigners were concerned, of whom 21 had submitted an application for asylum; such applications were dealt with on a priority basis. Article 76 (2) of the Immigration Control Act stipulated that applications for asylum had to be submitted within one year from the foreigner's entry into the territory of the Republic of Korea. The decision to grant or not to grant refugee status was taken by the Ministry of Justice. In the event of a refusal, the applicant could lodge an appeal. In order to avoid any discrimination in the asylum application procedure, the Government would be considering the possibility of revising the relevant provisions of the Immigration Control Act so as to establish clearly the right of any foreigner in the territory of the Republic of

Korea to apply for refugee status and delete the clause limiting to one year the time frame for the submission of such applications.

18. Mr. LIM Hoon-min (Republic of Korea), responding to the question of Mr. Mariño Menéndez on discrimination between North Korean fugitives and foreigners, said that article 3 of the Constitution defined North Koreans as Korean citizens. Consequently, North Koreans were not regarded as foreigners and were admitted into the territory of the Republic of Korea without restriction.

19. Mr. LEE Sun-wook (Republic of Korea) explained that the low rate of indictment in cases of human rights violations was due to the fact that complaints were often not substantiated. Furthermore, appeals against non-indictment decisions were very rarely accepted by the courts. Thus, only two of the 1500 appeals lodged each year had been considered admissible since 2000. As for problems connected with judicial decisions being based on testimony obtained during the investigation rather than direct statements during the trial, it must be borne in mind that any written statement which there was reason to believe had been obtained through torture was not admitted as evidence. Accordingly, when an accused person stated during the hearing that he or she had been subjected to torture and wished to retract statements made during the investigation, judges were required to examine carefully the allegations before taking those statements into account. Courts were increasingly vigilant in that regard and the draft reform of the Code of Criminal Procedure currently being considered by the National Assembly laid down stricter rules for the admission of written evidence.

20. Mr. PARK Joong-sup (Republic of Korea), reverting to the question of trafficking in human beings for the purposes of prostitution raised by Ms. Gaer, said that in the Republic of Korea trafficking in persons was held to be a serious crime that violated human rights and human dignity and that related offences were severely punished by the Criminal Code and other applicable laws, in particular the 2004 Act against prostitution and related activities. It was difficult to establish precise statistics on trafficking in human beings, but the decrease in the number of persons arrested on that charge suggested that there had also been a decrease in the number of traffickers. In 2005, 197 persons had been arrested, 33 had been charged and 27 had been convicted.

21. Mr. LEE Moon-han (Republic of Korea), replying to the question of Ms. Gaer on substitute cells, said that the number of persons held in such cells was not 3,600, as stated in the NGO report, but 385. Since 2005, joint inspections had been conducted by the National Human Rights Commission and representatives of civil society and NGOs. The Ministry of Justice and the National Police Agency were fully aware that detention conditions in such cells were deteriorating, particularly on account of overcrowding and the fact that female inmates were supervised by men. Six new detention centres were being built and a further five should be built by 2018.

22. Concerning the repression of farmers' demonstrations, the persons injured had benefited from emergency remedies and an internal police investigation together with fact-finding missions financed by the National Assembly were planned so as to ensure the application of appropriate punishments and reparation of the damage caused.

23. Mr. LEE Sun-wook (Republic of Korea), replying to Ms. Gaer's question on domestic violence, said that although opinion was divided as to whether marital rape should be included in the category of rape punished by law, the Supreme Court had handed down a decision in which it had concluded that marital rape was not punishable under the law. The possibility of classifying marital rape as an offence was a delicate issue which would be examined in the light of public opinion. The low rate of indictment in cases of domestic violence was due to the fact that disputes were often settled amicably during the investigation. In addition to the application of criminal penalties, there were other ways of addressing the problem of domestic violence, for instance by providing specialized counselling services and care facilities for the treatment of violent individuals.

24. Mr. PARK Joong-sup (Republic of Korea) said that the number of suicides in the army had dropped from 56 to 49 between 2000 and 2004. With 49 suicides per 500,000 soldiers, the suicide rate among young recruits was comparable to that of the civilian population in the same age bracket, which was 12 per 100,000 persons. The causal link between the psychological cruelty inflicted by superiors and suicides among young recruits had recently been recognized by a court seized of an application for compensation submitted by the family of a recruit who had taken his own life. The number of such cases brought before the district courts and the Supreme Court had risen from five in 2000 to 13 in 2004.

25. As a preventive measure, a new system had been introduced which enabled recruits who so desired to perform their military service in the same unit as their friends; that helped them to endure army life and maintain their psychological stability. In addition, conscripts could submit complaints via a mailbox set up for that purpose or by contacting a centre for the victims of ill-treatment. Furthermore, in April 2006, the National Assembly had approved a draft revised army regulation providing for the establishment of a human rights monitoring mechanism which would receive complaints from young recruits.

26. Mr. LEE Moon-han (Republic of Korea) said that, owing to the limited number of cases of torture in the Republic of Korea, there were not yet any rehabilitation centres specifically intended for torture victims. However, support centres for crime victims had been put in place throughout the country and could, if the need arose, care for torture victims. In addition, the Crime Victims Aid Act adopted in March 2006 provided for the establishment in the current year of a victims support mechanism that would contribute to rehabilitation activities and the launching of programmes for the protection of victims of violence, under which a specific rehabilitation system for torture victims could be set up, if the need made itself felt.

27. On the subject of prison visits, article 24 of the National Human Rights Commission Act gave NHRC full scope to inspect prisons and required prison directors to provide all the facilities needed for its investigations; if they refused to give access to the Commission, they could be penalized. Moreover, any person who considered that his rights or those of a third person had been violated during an interrogation could submit a complaint to NHRC, which could give its opinion on interrogation procedure standards; the Government took that opinion into account when framing policy. The Commission was not yet carrying out any training activities on the rights of detainees, but it was planning to do so. The Correction Bureau in the Ministry of Justice ensured that detainees were informed of their

rights on their entry into prison and had set up boxes for complaints in penitentiary institutions.

28. Lastly, the National Human Rights Commission played an active part in human rights policy-making and its recommendations were duly taken into account. On its advice, the Government was preparing to adopt a national action plan on human rights and more than 95 per cent of the Commission's recommendations concerning the individual complaints referred to it had been approved by the relevant authorities.

29. Mr. KIM Chung-hyun (Republic of Korea) said that the Presidential Commission on Suspicious Deaths was composed of professors of law, lawyers, experts in forensic medicine and officials of compensation services and that its independence and the transparency of its activities were guaranteed by law. Family members of the deceased person could apply to the Commission as witnesses or as complainants. It carried out thorough investigations and exchanged information with the ministries concerned, on the basis of which it delivered its conclusions.

30. Mr. KIM Chul-soo (Republic of Korea), on the question of the application of a statute of limitations to acts of torture, said that a bill aimed at suspending application of the Act on the Prescription of Crimes against Humanity, including torture, was being examined by the National Assembly.

31. Mr. PARK Joong-sup (Republic of Korea) said that conscientious objection was not recognized in domestic law, it being stipulated in the Constitution that freedom of conscience was subordinate to the exigencies of national defence. However, a bill drawn up in 2004 to amend the Military Service Act and providing for the establishment of civil service for conscientious objectors was currently being examined by the National Assembly.

32. Mr. KIM Chul-soo (Republic of Korea) said in connection with the arrest procedure that the Code of Criminal Procedure provided that the suspect must submit a request in order for a judge to examine whether or not pretrial detention was justified. However, the National Assembly was currently examining a bill to amend the Code of Criminal Procedure, which would require a judge to examine each case as a matter of course and to take the appropriate decision.

33. Mr. SHIN Yong-hae (Republic of Korea) said that juvenile delinquents were placed in special institutions established under the Juveniles Act. Juveniles serving a sentence were placed in detention centres where they were separated from adult detainees. Since 2000, they had been able to be placed in rehabilitation centres. In either case, occupational training courses were provided in order to promote their reintegration.

34. Mr. LEE Moon-han (Republic of Korea) said that, under the Punishment of Sexual Violence and Protection of Victims Act, rape was an offence and that, in certain circumstances, it could be considered an act of torture. In the March 2006 case in which a woman prisoner had been raped by a prison guard, the guard had been prosecuted under that Act. As for corporal punishment in schools, it was only allowed within strict limits laid down by the relevant laws and regulations.

35. Mr. KIM Joon-gyu (Republic of Korea), referring to the reservations entered by the Republic of Korea to articles 22 and 23 of the Convention, said that the Ministry of Justice had already taken steps to withdraw them: discussions were

under way between the various ministries and departments concerned. There was currently no reason not to expect a positive outcome, but the National Assembly still needed to give its approval. His delegation would make every effort on its return to advance the process. Lastly, he said that the replies that the delegation had been unable to provide orally owing to the limited time available for preparation would be sent to the Committee subsequently.

36. Ms. GAER, Country Rapporteur, said that she had taken due note of the delegation's reply concerning the decision of the Gwangju High Court but that, in the legislation of the State party, acts of torture were punished differently under different laws. She would therefore like to know whether, in cases where such acts were committed not in a prison but during the transfer of a person to a detention centre, the perpetrator would be subject to other penalties than those provided for in article 25 of the Criminal Code.

37. Since, according to the delegation's replies, 63 persons serving a prison sentence under the National Security Law had been either released or sent back to the Democratic People's Republic of Korea, it would be interesting to know whether some of those persons had been imprisoned on their return. If so, it would be appreciated if the delegation could say whether there existed in the Republic of Korea a review mechanism for repatriation decisions responsible for evaluating, with due regard for the provisions of article 3 of the Convention, whether those concerned were in danger of being subjected to torture on their return to their country.

38. She also wished to know whether the courts frequently had before them complaints from persons alleging that their confessions had been extracted from them by coercion and what measures were taken to ensure that, in practice, such statements were not used in judicial proceedings. Could a person found guilty on the basis of a confession obtained by torture from a third person contest the lawfulness of such evidence?

39. On the question of discrimination against women in the penitentiary system, she asked whether measures were planned to solve existing recruitment problems so that prison warders would include more women. It would be useful for the Committee to receive subsequently information concerning the number of women responsible for supervising detainees in women's detention facilities. She welcomed the establishment of independent human rights monitoring mechanisms, including the sexual violence monitoring board and the ombudsman system, but wished to know whether those mechanisms were already in operation, in which case she would like the delegation to give examples of related decisions handed down by the courts.

40. Regarding the improper use of restraining devices such as leather belts and protective facemasks, she would appreciate fuller information about the directive of the Ministry of Justice concerning mandatory protective headgear. She did not understand against whom the headgear provided protection. Was it supposed to protect the detainee against other detainees? Who distributed it and according to what criteria? She would also like to know how often the new regulations were applied which made it mandatory to report the use of restraining devices when such devices were imposed for more than a week.

41. Noting that, according to the delegation's replies, the courts of the Republic of Korea had not considered whether the Nepalese citizen returned to his country was

at risk of being tortured there, since the person concerned had not argued to that effect, she asked whether a person under a repatriation order always needed to plead the risk of torture or whether the courts automatically took that possibility into consideration.

42. Concerning the incidence of suicide in the army, she wished to know whether there were any awareness-raising measures to warn recruits and whether members of the army had been prosecuted for excessive use of force or hazing. While welcoming the fact that the National Human Rights Commission had free access at all times to detention facilities for emergency arrests, she inquired whether the relevant public authorities had installed a surveillance system, for instance video surveillance, in such facilities so that they themselves could monitor them.

43. *Mr. Mavrommatis resumed the Chair.*

44. Ms. SVEAASS, Alternate Country Rapporteur, wished to know why the debates on the possibility of classifying marital rape as an offence had led to the conclusion that such acts were not punishable by law. On the question of suicide in the army, she requested fuller information about the preventive measures taken and wished to know whether such measures had been adopted in prisons. In particular, did medical personnel give closer attention to detainees who appeared to be depressive? It would also be interesting to know how many prison inspections had been carried out in recent years. Lastly, noting from the documents received from non-governmental organizations that there existed a gay and transsexual rights defence group, she asked whether special attention was given to that group when monitoring sexual violence in prisons.

45. Ms. BELMIR wished to know who authorized the initial detention measure. She wondered whether there was not at the beginning of detention an uncertain period marked by an absence of judicial authority, as seemed to be suggested by the Supreme Court judgement referred to in paragraph 23 of the report.

46. Mr. GROSSMAN inquired whether, under current legislation, rape in prison could be assimilated to an act of torture and whether the State party was planning to legislate on the matter. Having noted, in addition, that the authorities considered public opinion to be a criterion for amending legislation, particularly on the issue of domestic violence, he asked whether the State party was intending to conduct public awareness campaigns so as to be able to comply with its obligations. On the question of migrant workers, he would like to know whether they were informed, in a language they understood, of the possibility of being assisted by a lawyer. Lastly, he asked whether the advice of the National Human Rights Commission was followed and what happened when it was not.

47. Mr. MARIÑO MENÉNDEZ said that it was his understanding that a request for asylum was considered when the person concerned was in Korean territory. He wished to know whether an asylum-seeker in an airport, at a border post or in Korean waters was considered to be in Korean territory for the purposes of the request for asylum and whether there was fast-track procedure for deciding the outcome. On the question of military service, information would be appreciated on the penalties inflicted on conscientious objectors and, in particular, whether they were divested of some of their civil rights.

48. Mr. KOVALEV asked whether lawyers could actually be excluded from participating in a case if they were an obstacle to the investigation or were at risk of destroying evidence.

49. Mr. KIM Joon-gyu (Republic of Korea), replying to a question from Ms. Gaer on the Gwangju incident, said that, pursuant to article 25 of the Criminal Code, the culprits had been punished, except for one person whose case was still being examined. Regarding the definition of torture, the dialogue with the Committee had enabled the delegation to understand better the need for a general definition. He would refer the matter to all the ministries concerned with a view to adding such a definition to the legislation.

50. As for the nationals of the Democratic People's Republic of Korea repatriated to their country, they were welcomed as heroes on their return and there was therefore no reason to be concerned about them.

51. On the question of confessions, they could be taken into account in a trial, but if there was the slightest suspicion of torture or if the defendant retracted, they ceased to have any legal value. The procedure then had to start again from the beginning and solid grounds had to be found to establish guilt, as laid down by the Constitution. For that reason, judges scrutinized very closely any statement received from the Prosecutor's Office.

52. In response to a question put by Ms. Belmir, he acknowledged that judges had previously played a limited role in imprisonment but the law had changed. At the present time, more than 80 per cent of cases of detention were examined by a judge, the goal being 100 per cent, while reducing the waiting time for being brought before a judge.

53. In the case of emergency arrests, the accused person did not appear before a judge within a 48-hour time frame. Hence there was indeed a risk of torture or ill-treatment. The State party was therefore planning to strengthen oversight measures during the period of detention.

54. Replying to Mr. Grossman, he admitted that acts of torture committed in detention centres could have been concealed in the past, but said that the legislation had been strengthened following a death and guards were henceforth subject to very strict rules. Interrogations were now conducted in open rooms. In cases where isolation was necessary, the closed room was equipped with a closed-circuit television camera.

55. With regard to the National Human Rights Commission, it was true that its recommendations were not binding, but 95 per cent of them were accepted by the authorities. In the event of disagreement between the Commission and the Government, the two parties tried to reach a compromise.

56. In response to a question from Mr. Kovalev, he said that the Constitution guaranteed the right of lawyers to be present during proceedings, but that did not mean that they would be constantly present; sometimes, they themselves did not wish to be.

57. Mr. KIM Chung-hyun (Republic of Korea), referring to the case of the Nepalese migrant worker expelled in 2004, said that it was the practice of the State party to take into account the political situation of the country of origin and the personal situation of the individual concerned. At the time of the expulsion, many

citizens of both countries moved between Nepal and the Republic of Korea, which showed that the country was not as unstable as now. The person concerned had trade union activities in the country, where he had been living for nine years, but had no link with political life in Nepal. He had never proved that he was at risk of being subjected to torture if he returned there; the State party had therefore considered that there was no such risk. Since that time, the Ministry of Justice had established a nationality and refugee division which kept informed of the situation in other countries, particularly in regard to torture, and helped the Ministry to decide on requests for asylum.

58. Furthermore, all migrant workers could have access to a lawyer, if they so desired. The State party did not yet provide a legal assistance service, but it had obtained information about the mechanisms in place in other countries, had taken note of the Committee's recommendations and would study measures to that end. Concerning applications for asylum, the Immigration Control Act did not explicitly cover applications made at borders. It was possible that a person requesting asylum in such a situation would be refused entry, but in cases known to him personally the decision taken had been in favour of admission.

59. Mr. KIM Young-yeun (Republic of Korea), replying to a question from Ms. Gaer said that of the 47,000 detainees in the country, women represented 5.3 per cent, and of 13,000 guards, 7 per cent were women. New female guards were to be recruited in 2006 and 2007.

60. Facemasks were no longer used except to protect detainees who attempted suicide by banging their heads against the wall. Restraining devices were used with the greatest caution, and usually in order to prevent a detainee from committing suicide or during a transfer. The law governing their use had been revised in 2004, and since then they had not been used much. In cases of abuse, legal action could be taken against the prison authorities by the victim, the National Human Rights Commission or any other party.

61. Mr. SHIN Yong-hae (Republic of Korea), replying to a question from Ms. Sveaass concerning compensation, said that the independent commission on suspicious deaths was not empowered to compensate the families of victims. The courts determined responsibilities and, where appropriate, the amount of compensation.

62. Mr. PARK Joong-sup (Republic of Korea), responding to a question from Mr. Mariño Menéndez on conscientious objectors, said that all Koreans without exception were supposed to do military service. However, the National Human Rights Commission had recommended that the Military Service Act should be amended and the National Assembly and the ministries concerned were studying the question.

63. Mr. LEE Sun-wook (Republic of Korea), replying to a question from Ms. Gaer on emergency arrests, said that law-enforcement services carried out such arrests in three types of situation where they could not wait for an arrest warrant: drunk driving, violence on the public highway and robbery. NGOs reported some 13,000 arrests with warrants and 98,000 emergency arrests in 2003, whereas according to official figures, only 14.1 per cent of arrests had been emergency arrests and indeed their number was decreasing. Statistics showed that the monitoring mechanisms put in place to end wrongful arrests were bearing fruit. Any arrested person could

immediately call a lawyer and inform his or her family. The National Human Rights Commission investigated whenever it had reason to believe that an arrest was unlawful. All emergency arrests must be approved by the hierarchical superior.

64. On the question of marital rape raised by Ms. Sveaass, the Supreme Court considered that forced sexual intercourse within marriage did not constitute rape. However, experts and public opinion alike were divided in that regard. It was a question of lawfulness but also of culture and society; it was time to initiate a dialogue in order to arrive at a definition of marital rape.

65. Mr. SHIN Yong-hae (Republic of Korea), referring to the National Security Law, said that the number of persons arrested under it was sharply decreasing. Furthermore, in 2000, 65 detainees serving a long-term sentence under that Act had been repatriated to the People's Democratic Republic of Korea. Most had found their way into the Republic of Korea during the war and had wished to return home.

66. On the nationality issue, the Constitution defined Korean territory as all the Korean peninsula and islands. North Koreans, who also lived in the peninsula, were therefore also considered to be of Korean nationality.

67. Ms. PARK Min-jung (Republic of Korea) said that her country looked forward to consulting a large number of non-governmental organizations in a wide range of fields.

68. Mr. KIM Joon-gyu (Republic of Korea) said that his delegation had endeavoured to reply as openly as possible to the many questions put by the Committee experts. While, clearly, much remained to be done to promote human rights and prevent torture, substantial progress had already been made, as demonstrated by the information provided during the meeting. He recalled in particular that his country was planning to withdraw its reservations to articles 21 and 22 of the Convention in 2006. Lastly, he assured the members of the Committee that the Republic of Korea would take due account of the very interesting observations and suggestions made by the experts.

69. The CHAIRPERSON thanked the delegation for contributing to a fruitful dialogue with the Committee and encouraged the State party to continue its efforts to give effect to the Committee's recommendations. He declared that the Committee against Torture had completed its consideration of the second periodic report of the Republic of Korea.

70. *The delegation of the Republic of Korea withdrew.*

The first part (public) of the meeting rose at 5.25 p.m.