



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

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## Committee against Torture

### List of issues prior to submission of the sixth periodic report of the Republic of Korea\*

#### Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations

##### Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/KOR/CO/3-5, para. 49),<sup>1</sup> the Committee requested the State party to provide information on follow-up to the Committee’s recommendations on issues of particular concern, namely, on the outcome of investigations by the Prosecutor’s Office and the National Police Agency in relation to the death of Baek Nam-Gi, on the outcome of any proceedings in relation to the Sewol Ferry accident, on the closing of remaining “substitute cells” in police stations and on the establishment of the office of the military ombudsman (paras. 14 (d) and (e), 26 and 36 (b)). The Committee expresses its appreciation for the State party’s follow-up on those and other matters referred to in its concluding observations, as well as the substantive information provided on the follow-up to those issues (CAT/C/KOR/CO/3-5/Add.1). However, the Committee considers that the recommendations contained in paragraphs 14 (d) and (e), 26 and 36 (b) of the concluding observations have not been implemented (see paras. 5, 6 (a), 14 and 17 (b) below).

##### Articles 1 and 4

2. With reference to the Committee’s previous concluding observations (paras. 7–8), please provide information on:

(a) Any amendments to the Criminal Code aimed at incorporating a definition of torture that makes it a distinct crime, includes all elements covered in article 1 of the Convention, including the mental and psychological aspects of torture, and goes beyond only specific individuals in the investigation and trial processes;

(b) Whether there have been amendments aimed at ensuring that penalties for acts of torture prosecuted under domestic criminal law are commensurate with the gravity of the crime (A/HRC/37/11, para. 132.91).

3. With reference to the Committee’s previous concluding observations (paras. 9–10), please provide information on any amendments to national legislation during the period under review aimed at ensuring that the prohibition of torture is absolute and non-derogable and that there is no statute of limitations for acts of torture, attempts to commit torture or

\* Adopted by the Committee intersessionally on 7 May 2020.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.



acts constituting complicity or participation in torture, including beyond those contained in article 6 of the Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court.

#### **Article 2<sup>2</sup>**

4. With reference to the Committee's previous concluding observations (paras. 11–12), please provide updated information on any measures taken to ensure that all detained persons, including juveniles, persons who are detained under urgent arrest procedures conducted without a warrant, those who are under police investigation and prisoners on remand, are afforded in practice all fundamental legal safeguards in accordance with international standards from the outset of their deprivation of liberty, in particular the following rights:

(a) To be informed, both orally and in writing and in a language that they understand, of the charges against them and of their rights and how to exercise them;

(b) To have confidential access to a qualified and independent lawyer, including one of the detainee's choice or to free legal aid when needed, from the very outset of detention and during all stages of the proceedings against them, including when there are reasons of "good cause" established by the prosecution or the police;

(c) To request and receive a medical examination by a qualified medical doctor within 24 hours of their arrival in a place of detention and to have access to an independent doctor upon their request; please also clarify whether doctors can bring medical reports of injuries suspected of being caused by torture directly to the attention of the public prosecutor on a confidential basis;

(d) To notify a family member or any other person of their choice of their detention immediately after their apprehension;

(e) To be brought before a judge within 48 hours of apprehension and to have their detention, including transfers, recorded immediately after arrest and for their lawyers and family members to have access to the Korea Information System of Criminal Justice Services;

(f) To challenge the legality of their detention with the assistance of a lawyer.

5. With reference to the Committee's previous concluding observations (paras. 13–14), and taking note of the follow-up information provided by the State party (CAT/C/KOR/CO/3-5/Add.1), please provide information on the following: the sentences imposed on the former Commander and two officers of the Fourth Mobile Corps of the Seoul Metropolitan Police Agency who were found guilty on 5 June 2018 of causing the death of Mr. Baek, owing to the skull fracture resulting from a direct hit by a high-pressure police water cannon on 25 September 2016; any action against the remaining three officers involved in the incident (para. 14 (d)); the results of the appeal by the prosecutor's office filed on 8 June 2018 stating that the sentencing of the other defendants cited above "was lenient compared to their liabilities"; any steps taken to remedy the lack of safety inspection and insufficient training of riot police assigned to control water cannons; the implementation of the eight recommendations made by the fact-finding commission on human rights violations in relation to the death of Mr. Baek; and any redress and apologies given to the family of Mr. Baek.

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<sup>2</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also section V of the same general comment.

6. In addition, with reference to the Committee's previous concluding observations (paras. 13–14), and taking note of the follow-up information provided by the State party (CAT/C/KOR/CO/3-5/Add.1), please provide the following:

(a) Updated information on any complaints and investigations during the period under review regarding the excessive use of force, including the firing of water cannons and pepper spray, in particular with regard to the excessive use of force against the bereaved families of victims of the Sewol Ferry accident during the one-year memorial assembly, the outcome of the proceedings and on any redress, including rehabilitation and compensation, that may have been awarded to them;

(b) Information on whether law enforcement officers receive appropriate training on the use of force and firearms and on the absolute prohibition of torture;

(c) Information on whether the tactics used for the management of assemblies have been reviewed, including the training of riot police on the handling of water cannons, and whether more rigorous safety inspections have been introduced since the death of Mr. Baek.

7. With reference to the Committee's previous concluding observations (paras. 15–16), please provide updated information on whether, during the period under review, the National Security Act has been repealed or amended to ensure its full conformity with the Convention, including that persons are not to be arbitrarily arrested or detained under the Act or subjected to coerced confessions. Please indicate whether there have been any amendments to the vague wording of article 7 of the Act, on "Praise/incitement", which may give rise to violations of the Convention.

8. With reference to the Committee's previous concluding observations (paras. 19–20), please provide information on whether an independent and effective mechanism for addressing complaints of torture and ill-treatment in all places of deprivation of liberty has been established and whether it allows for the submission of medical evidence in support of allegations of torture and ill-treatment. Please also provide information on the number of complaints of torture and ill-treatment received by the National Human Rights Commission of Korea, the Human Rights Bureau of the Ministry of Justice and the Human Rights Division of the Ministry of National Defence during the period under review on the investigations into those complaints and their outcomes.

9. With reference to the Committee's previous concluding observations (paras. 43–44), please indicate whether an independent committee to nominate candidates for the National Human Rights Commission of Korea has been created and whether a clear, transparent and participatory process for the selection and appointment of its members has been set up. Please indicate whether the monitoring functions of the Commission in all places of deprivation of liberty have been strengthened and whether it has been provided with adequate human and financial resources and provide information about the number of visits undertaken by the Commission, as well as examples of recommendations relating to the prevention of torture that have been implemented by the authorities during the reporting period. Please also indicate any consideration given to accession to the Optional Protocol to the Convention. In addition, please provide information on the adoption of the third national action plan for human rights (A/HRC/37/11, paras. 130.12–130.14).

### Article 3

10. With reference to the Committee's previous concluding observations (paras. 17–18), please provide information on whether:

(a) Persons escaping from the Democratic People's Republic of Korea can still be detained lawfully for up to six months after their escape, whether in practice persons can be detained for indefinite periods by the National Intelligence Service, whether a legal maximum time period has been established for the detention of such persons and the number of such cases during the reporting period;

(b) Persons who have escaped from the Democratic People's Republic of Korea are afforded fundamental legal safeguards, including the right to legal counsel during

interrogation and the entire length of detention, and whether the methods and duration of interrogation comply with international standards;

(c) Clear and transparent procedures exist with regard to ensuring the right to appeal for decisions concerning the deportation of persons escaping from the Democratic People's Republic of Korea, with suspensive effect while they are being reviewed, and whether precautions were taken in relation to the deportation on 7 November 2019 of two fishermen to the Democratic People's Republic of Korea with regard to the State party's obligations under article 3 of the Convention;

(d) In addition, please provide information on any steps taken to revise article 5 of the Enforcement Decree of the Refugee Act with regard to removing most of the grounds for non-referral to asylum procedures, to improve reception conditions for asylum seekers at ports of entry, to improve the quality of first-instance refugee status determination decisions, to establish an independent asylum appellate body accessible to all asylum seekers who are rejected at the first-instance level and to improve the material conditions in immigration detention facilities and the ability to identify victims of torture; please also provide information about the current status of the 500 Yemeni asylum seekers on Jeju Island.

#### **Article 10**

11. With reference to the Committee's previous concluding observations (paras. 45–46), please provide information on whether:

(a) Training on the absolute prohibition of torture and on the provisions of the Convention has been made mandatory for all public officials coming into contact with persons deprived of their liberty, including law enforcement personnel and especially those conducting urgent arrests, and specify how many of those officials have received such training;

(b) The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an essential part of the training of all medical professionals and other public officials working with persons deprived of their liberty; please also clarify how many medical professionals participated in such training;

(c) Any methodologies have been developed to assess the effectiveness of the training provided to relevant public officials and its impact on the reduction of the incidence of torture.

#### **Article 11**

12. With reference to the Committee's previous concluding observations (paras. 21–22), please provide information on the steps taken during the period under review to use alternatives to detention, reduce overcrowding, expand the room allotted to inmates and improve the material conditions in correctional facilities, including those for juveniles, and on measures taken to organize daily exercise, rehabilitation and reintegration services in criminal justice institutions, hire additional prison guards and medical personnel, ensure more referrals to outside specialized medical care and ensure that protective devices and restraints are used only as a measure of last resort.

13. With reference to the Committee's previous concluding observations (paras. 23–24), please provide information on any amendments to legislation to ensure that solitary confinement is applied for a duration that does not exceed 15 days, is not renewed or prolonged and is an exceptional measure of last resort. Please indicate whether the physical and mental condition of detainees in solitary confinement is monitored daily by qualified medical personnel and whether the detainees concerned have the right to an independent hearing and to appeal the decision of the disciplinary committee.

14. With reference to the Committee's previous concluding observations (paras. 25–26), and taking note of the follow-up information provided by the State party (CAT/C/KOR/CO/3-5/Add.1), please provide the Committee with updated information concerning the closing of the remaining "substitute cells", including on whether the

budgetary constraints preventing the closing of two “substitute cells” have been overcome during the period under review, and concerning the building of detention and correctional centres with adequate material conditions in all regions and jurisdictions. Please indicate whether the State party has ensured an increase in the number of guards in detention rooms and whether female police officers supervise all places of detention where women are deprived of their liberty, including in the one remaining “substitute cell”.

15. With reference to the Committee’s previous concluding observations (paras. 27–28), please provide information on the following:

(a) The number of deaths in custody, including their type and causes, both in pretrial and correctional facilities, disaggregated by the facility in which the deceased was detained, the age and sex of the victim and the outcome of the inquiries, and any redress provided to families, as well as specific measures taken to prevent deaths in custody, including suicides, during the period under review, such as the provision of adequate medical treatment to persons suffering from diseases and those requiring specialized medical care;

(b) Whether all deaths in custody, including suicides, sudden deaths and those due to the absence of adequate medical treatment, of persons under investigation and sentenced prisoners are promptly investigated and whether persons suspected of having committed acts of torture, physical or psychological ill-treatment or wilful negligence are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;

(c) Whether independent forensic examinations are carried out in relation to all deaths in custody and whether family members receive autopsy reports and are able, upon request, to commission independent autopsies.

16. With reference to the Committee’s previous concluding observations (paras. 29–30), please provide updated information on any consideration given to abolishing the death penalty, voting in favour of the recurring resolutions of the General Assembly on a moratorium on the use of the death penalty<sup>3</sup> and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (A/HRC/37/11, paras. 132.70–132.89). In addition, please provide information on the number of prisoners on death row, whether death sentences continue to be imposed by courts, whether and how many have been commuted to prison terms and whether prisoners who were formerly on death row benefit from the same regime as other prisoners, in accordance with international standards.

### Articles 12 and 13

17. With reference to the Committee’s previous concluding observations (paras. 35–36), and taking note of the follow-up information provided by the State party (CAT/C/KOR/CO/3-5/Add.1), please provide information on the following:

(a) Any additional measures taken to prohibit and eliminate violence and abuse, including sexual, physical and verbal abuse, in order to demonstrate zero tolerance for ill-treatment and torture in the military, and any consideration given to repealing article 92-6 of the Military Criminal Act (A/HRC/37/11, paras. 132.66–132.68);

(b) Whether the Ministry of National Defence and the National Human Rights Commission of Korea have established the office of the military ombudsman, which was listed as one of the 100 priorities under the five-year national policy agenda announced in August 2017; please also provide information on the outcome of the three bills in that connection before the National Assembly and on the mandate and legal status of the military ombudsman, and please indicate whether the ombudsman will have the power to conduct investigations into allegations of abuse and violence in the military;

<sup>3</sup> See General Assembly resolutions 62/149, 63/168, 65/206, 67/176, 69/186, 71/187, 73/175, adopted at its sixty-second session and biennially from its sixty-third session, on which the Republic of Korea abstained from voting.

(c) Measures to prevent violence in military units, including information on the work of the “Help Call” helpline of the Ministry of National Defence and the Military Human Rights Advisory Committee, as well as the results of the research project initiated in April 2017 aimed at diagnosing the status of respect for human rights in the military, and whether they have had an effect on reducing violence and human rights abuses.

#### **Article 14**

18. The Committee recalls its previous concluding observations (paras. 47–48) and takes note of the fact that 38 victims of sexual slavery during the Second World War were alive at the time of the consideration of the State party’s previous periodic report in 2017 and that only 20 are still alive today. In that regard, please provide information on any steps taken to ensure that the agreement reached on 28 December 2015 between the Governments of Japan and the Republic of Korea on the issue of “comfort women” provides for adequate redress, including the right to compensation and rehabilitation and the right to truth, reparation and assurances of non-repetition, in accordance with the Committee’s general comment No. 3 (2012) on the implementation of article 14, for the surviving 20 victims of sexual slavery during the Second World War who are currently registered with the Government of the State party and the families of the ones who have died, that it meets their demands and that it is in line with international human rights standards. In addition, please provide updated information on whether a rehabilitation programme has been established during the period under review in order to provide victims of violations of the Convention with an enforceable right to redress, including specialized rehabilitation services and fair and adequate compensation, without the obligation to file a formal administrative or criminal complaint.

#### **Article 16**

19. With reference to the Committee’s previous concluding observations (paras. 37–38), please provide updated information on further steps taken to address violence against women, domestic violence and sexual violence and on whether marital rape has been included as a separate offence in the Criminal Code (A/HRC/37/11, para. 132.92). Please indicate whether victims of domestic violence benefit from protection, including restraining orders, and whether they have access to medical and legal services and adequately funded shelters throughout the country.

20. With reference to the Committee’s previous concluding observations (paras. 39–40), please provide updated information on steps taken to provide legal protection to migrant workers, including women migrant workers, against sexual violence and ill-treatment and the confiscation of personal documents, as well as on steps taken to ensure that migrant workers have access to medical care, government-funded shelters and justice, including legal and interpretation services, and can change employment within a reasonable amount of time. In addition, please indicate whether any abusive employers have been prosecuted for violence or ill-treatment during the period under review and provide information on the outcome of the proceedings.

21. With reference to the Committee’s previous concluding observations (paras. 41–42), please provide information on any amendments to article 5 of the Enforcement Decree of the Refugee Act, the introduction of an appeal mechanism concerning negative asylum decisions and whether appeals against negative decisions have a suspensive effect. In addition, please provide information on whether a maximum duration of immigration detention has been prescribed in law, whether minors continue to be subjected to detention and any steps taken during the period under review to improve the material conditions in immigration detention facilities.

22. Please indicate whether trafficking in persons is a criminal offence in the State party, and provide information on steps taken to combat trafficking in persons and to establish an effective mechanism to identify victims of trafficking (A/HRC/37/11, paras. 130.45–130.47).

23. With reference to the Committee’s previous concluding observations (paras. 33–34), please provide information on any steps taken to prohibit, in law and practice, the corporal

punishment of children in all settings at the national level, including in orphanages, child welfare centres, day-care settings and in schools, as well as in the home in every province, not just in Seoul (A/HRC/37/11, para. 130.75).

24. Please provide information on measures to eradicate impunity and to hold accountable the perpetrators of physical violence, including sexual assault, verbal violence, abuse and molestation in the military, which may amount to torture and other cruel and degrading treatment, which, inter alia, reportedly results in some 50 soldiers committing suicide every year, and on what is being done to curb that trend and punish those responsible. Please indicate whether non-judicial officers who do not have a licence to practice law are allowed to preside over military trials, and please provide updated information on the status of the arbitrary confinement of conscripts without warrants issued by a judge in “military guardhouse detention” and on “disciplinary training”.

25. With reference to the Committee’s previous concluding observations (paras. 31–32), please provide information on the following:

(a) Any amendments to the Mental Health Act aimed at fully bringing it into line with the Constitution, and in particular article 24 (1) and (2), given that the Constitutional Court ruled in 2016 that the criteria for involuntary hospitalization were not explicit and prone to abuse, resulting in the excessive restriction of a patient’s personal freedom;

(b) Any measures taken during the period under review to reduce the number of persons with intellectual and psychosocial disabilities who do not present a threat to themselves or others who are involuntarily hospitalized and to ensure that involuntary psychiatric hospitalization is strictly necessary, proportionate and applied as a measure of last resort;

(c) Any steps taken to ensure that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient and that any involuntary hospitalization in psychiatric institutions is monitored by an outside body that is mandated to carry out such monitoring and is independent of the health authorities;

(d) Whether persons involuntarily hospitalized in psychiatric institutions enjoy effective legal safeguards, including the rights to effective appeal, to be heard in person by the judge, judicial tribunal or board ordering the hospitalization;

(e) Whether an independent complaint mechanism and counsel has been established during the period under review for persons involuntarily hospitalized in psychiatric institutions to effectively and impartially investigate all complaints of violations of the Convention, bring those responsible to justice and provide redress to victims.

## **Other issues**

26. Please provide updated information on the measures taken by the State party to respond to threats of terrorism. Please describe whether those measures have affected human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that those measures are compatible with all its obligations under international law, especially the Convention. Furthermore, please indicate what training is given to law enforcement officers in that area, the number of persons who have been convicted under legislation adopted to combat terrorism, the legal remedies and safeguards available in law and in practice to persons subjected to anti-terrorism measures and whether there have been complaints of the non-observance of international standards in applying measures to combat terrorism and, if so, what the outcome was.

27. Given that the prohibition of torture is absolute and cannot be derogated from, including within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement,

such as in homes for the elderly or hospitals or institutions for persons with intellectual and psychosocial disabilities.

**General information on other measures and developments relating to the implementation of the Convention in the State party**

28. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the State party's previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and provide statistical data. Please also provide any other information that the State party considers relevant.

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